

***United States Court of Appeals
for the Second Circuit***



EXHIBITS

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 74-1166

PHILIP HANDELMAN and ESTHER HANDELMAN,
Appellees

v.

COMMISSIONER OF INTERNAL REVENUE,
Appellants

EXHIBITS

TABLE OF CONTENTS

	Page
Exhibit 1-1, Stipulation of Facts No. 1 -----	1
Exhibit 7-G, Summons and Complaint in <u>Handelman</u> <u>v. Van De Maele and O'Connor</u> (N.Y. Sup. Ct., N.Y. Co.) -----	7
Exhibit 9-I, Amended Answer in New York Supreme Court case -----	12
Exhibit 10-J, Final Judgment in New York Supreme Court case -----	18
Exhibit 11-K, Stipulation in New York Supreme Court case -----	20
Exhibit 12-L, Stock Certificate of Graphic Arts Exhibit Building, Inc. -----	23
Exhibit 13-M, Stock Certificate of Graphic Arts Exhibit Building, Inc. -----	24
Exhibit 14-N, Order in New York Supreme Court Case -----	25
Exhibit 15-O, Tax Status form from New York State Department of Taxation and Finance for Graphic Arts Exhibit Building, Inc. -----	28
Exhibit 16-P, Copy of Check payable to Chemical Bank New York Trust Company -----	30
Exhibit 17-Q, Credit Slip from Chemical Bank New York Trust Company to account of E. M. Handelman -----	31
Exhibit 22, Drawing of Graphic Arts Building at New York World's Fair 1964-1965 -----	33
Exhibit 23, Application for permit to construct a foundation at the New York World's Fair -----	34
Exhibit 24-R, Documents filed in New York Supreme Court case:	
Order of Judge Lupiano -----	35
Notice of Motion -----	38
Affirmation -----	39
Amended Complaint -----	49
Exhibit A -----	54
Exhibit B -----	55
Exhibit C -----	56
Answer to Amended Complaint -----	57
Exhibit 1 -----	69
Exhibit A -----	71
Addendum to Escrow Instructions -----	74
Certificate of Protest -----	75
Certificate of Protest -----	76
Letter to Thomas R. O'Connor from Philip Handelman -----	77
Acknowledgement of Banker's Trust Company, as escrowee, of receipt of Certificate 16, Certificate 17, and Certificate 18 -----	78
Acknowledgement of Bankers Trust Company, as escrowee, of receipt of Certificate 16, Certificate 17, and Certificate 18 -----	79
Exhibit 25-S, Affirmation filed in New York Supreme Court case -----	80
Exhibit 27, Statement from The Corporation Trust Company to Philip Handelman -----	92
Exhibit 28, Taxpayer's 1961 summary re boat -----	93
Exhibit 29, Taxpayer's 1962 Summary re boat -----	94

	Page
Exhibit 30, Taxpayer's 1963 summary re boat -----	95
Exhibit 31, Taxpayer's 1964 summary re boat -----	96
Exhibit 32, Taxpayer's 1965 summary re boat -----	98
Exhibit 33, Taxpayer's chart of fees earned -----	100
Exhibit 34, Taxpayer's list of fees earned -----	105

UNITED STATES TAX COURT

PHILIP HANDELMAN and
ESTHER HANDELMAN.

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 4913-67

STIPULATION OF FACTS

The parties heroby stipulate and agree that for the purpose of this case the following facts and exhibits attached hereto and made a part hereof may be taken as true, subject to the rights of the parties to introduce other and further evidence not inconsistent with this stipulation and preserving the parties' rights to object, at the time of trial, to any and all portions of said stipulation and attached exhibits as they may deem to be irrelevant or immaterial.

1. The petitioners, Philip Handelman and Esther Handelman, are husband and wife, hereinafter sometimes collectively referred to as the petitioners, who reside at 5 Tudor City Place, New York, New York, which address was their legal address on the date they filed their petition with the United States Tax Court.

Exhibit 1-1

Exhibit 1-1

2. The petitioner, Philip Mandelson, hereinafter sometimes referred to individually as the petitioner, is an attorney-at-law, who is licensed to practice law in the State of New York.

3. For the taxable years ended December 31, 1961 to December 31, 1963, inclusive, and December 31, 1965, the petitioners filed timely joint individual United States income tax returns (Forms 1040), with the District Director, Manhattan District, New York; an amended income tax return for the taxable year 1965 was filed on March 14, 1966; copies of the aforesaid United States income tax returns and the amended return are attached hereto as Respondent's Exhibits A to E, inclusive.

4. A retained copy of the petitioners' 1964 income tax return is attached hereto as Respondent's Exhibit 6-F.

5. During the years in question, the petitioners filed their joint United States income tax returns on a calendar year basis and were on a cash basis method of accounting and reporting for income tax purposes.

6. On their joint individual 1963 United States income tax return, the petitioners reported on the installment basis \$22,378.00 as long term capital gain received from their alleged sale of stock of Graphic Arts Exhibit Building, Incorporated, hereinafter sometimes referred to as Graphic

Arts; per the schedule attached to their return. This stock was purportedly sold on August 30, 1961 for \$245,000.00.

7. In connection with the purported sale of Graphic Arts stocks, the petitioner received on or about August 30, 1961 the sum of \$25,000.00, which sum was included in the \$36,794.00 of total receipts as reported by the petitioner in Schedule "C" of his 1961 United States income tax return (Form 1040).

8. Attached hereto as Joint Exhibit 7-G is a copy of the summons and complaint in the matter of the petitioner against Joan G. Van de Maele and Thomas R. O'Connor, defendants.

9. Attached hereto as Joint Exhibits 8-H and 9-I are copies of the answer and amended answer that were filed with the New York Supreme Court in response to the summons and complaint referred to in paragraph 8 above.

10. Attached hereto as Joint Exhibit 10-J is a copy of the Final Judgment as filed with the Court in the proceedings as referred to in subparagraph 8 above.

11. Attached hereto as Joint Exhibit 11-K is a General Release and stipulation involving a disposition of the proceeding referred to in paragraph 8 above.

12. On May 8, 1970 the petitioner received the sum of \$60,500.00 in consideration of his execution of the stipulation and General Release referred to in paragraph 11 above.

13. Attached hereto as Joint Exhibits 12-L and 13-M are copies of stock certificates of Graphic Arts that were issued to the petitioner on June 13, 1962 for 39 and 25 shares of its capital stock, respectively.

14. In 1950 the petitioner purchased a 46 foot sailing vessel and named it: "Chee Chee V". He is a member of several yachting clubs and associations. During the years in question the petitioner claimed as business deductions boat expenses incurred in connection with the operation and maintenance of the aforesaid sailing vessel, which expenses the respondent has disallowed to the following extent:

Boat Expenses

Year	Claimed	Disallowed
1961	\$ 3,857.00	\$ 3,525.55
1962	6,395.80	4,795.92
1963	9,107.25	9,107.25
1964	6,849.87	6,849.87
1965	12,255.83	12,255.83

15. Petitioner claimed business expenses for "other entertainment" in the following amounts that were disallowed by the respondent to the extent as shown below:

Other Entertainment

Year	Claimed	Disallowed
1961	\$ 4,271.50	\$ 2,135.75
1962	5,029.27	839.62
1963	5,303.74	2,083.84
1964	4,566.83	945.81
1965	6,713.00	-0-

16. A detailed analysis of the disallowed business expenses as claimed by the petitioner is set forth in the schedules below:

1961 Expenses Disallowed

Boat Expenses

Total expenses incurred	\$ 4,821.74	
Less: Sales capitalized	<u>3,500.00</u>	
Net expenses recognized	<u>1,321.74</u>	
Business use allowed (25%)	330.44	
Deduction claimed	<u>3,857.00</u>	
Disallowed		\$ 3,526.56

Boat Depreciation

Claimed	\$ 4,000.00	
Allowable (25% on adjusted basis)	<u>734.35</u>	3,265.65

Other Entertainment

Disallowed (50% of \$4,271.50 claimed)		2,135.75
--	--	----------

Automobile Rent

Disallowed (50% of \$1,200.00 claimed)	600.00	
Total		\$ <u>9,527.96</u>

1962 Expenses Disallowed

Promotion & entertainment claimed

\$11,425.16

Disallowed:

Boat Expenses (75% of \$6,395.69)	\$ 4,796.70
Entertainment (2 personal items)	<u>889.62</u>
	\$ 5,686.32

Office petty cash expenses claimed 3,850.00

Disallowed as personal

	<u>1,200.00</u>
Total	\$ <u>6,886.32</u>

1963 Expenses Disallowed

Promotion expenses claimed \$14,410.99

Disallowed:

Boat expenses (100%)	\$ 9,107.25
Other entertainment (unsubstantiated)	<u>2,083.83</u>
Total	\$ <u>11,191.08</u>

1964 Expenses Disallowed

Promotion & entertainment claimed \$11,416.70

Disallowed:

Boat expenses (100%)	\$ 6,849.87
Entertainment (unsubstantiated)	500.00
Gifts	<u>443.81</u>
	\$ 7,793.68

Office Petty cash expenses claimed \$ 5,275.00

Disallowed as personal

	<u>1,200.00</u>
Total	\$ <u>8,993.68</u>

1965 Expenses Disallowed

Promotion & entertainment claimed \$13,968.88

Disallowed:

Boat expenses (100%)	<u>\$12,255.88</u>
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17. Attached hereto as Joint Exhibit 14-N is a copy of an Order of Justice Vincent A. Lupiano of the Supreme Court, County of New York, State of New York, that was filed on December 7, 1965 in the case of the petitioner against Joan G. Van De Maelle and Thomas R. O'Connor.

/s/
Counsel for Petitioners

/s/
LEE H. MENKEL, JR.,
Acting Chief Counsel,
Internal Revenue Service.

100-Cover, System Court of New York

Julius Rosenberg, Inc., Law Firm, 300 Madison Avenue, New York 17, New York

Supreme Court of the State of New York
County of New York

PHILIP MANDELMAN

Plaintiff designated

New York County

as the place of trial.

Plaintiff

against

Summons with Notice and Complaint

**JOAN G. VAN DE MARLE and
THOMAS R. O'CONNOR**

Plaintiff resides in
New York County

Defendant

To the above named Defendant :

Now the Party Summoned to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a copy of your answer, on the Plaintiff's Attorney within twenty days after the service of this summons, on the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated, April 29th, 1963

PHILIP MANDELMAN

Attorney for Plaintiff
Cable and Pen Office, 300 Madison Avenue
New York 17, New York

SUPREME COURT: STATE OF NEW YORK
COUNTY OF NEW YORK

PHILIP HANDELMAN,

Plaintiff,

X

COMPLAINT

against-

JOAN G. VAN DE MAELE and
THOMAS R. O'CONNOR,

X

Defendants.

X

PHILIP HANDELMAN, as and for his complaint
alleges;

FOR A FIRST CAUSE OF ACTION
AGAINST BOTH DEFENDANTS

1. That at all times hereinafter mentioned the
Plaintiff was and still is a resident of the City, County and State of
New York.
2. That at all times hereinafter mentioned the
Defendants were and still are residents of the City, County and State
of New York.
3. That heretofore and on or about the 13th day of
June, 1962, for value received, Defendants made and delivered to
Plaintiff their promissory note in writing, a copy of which is annexed
hereto as exhibit "A".

4. That Plaintiff is now the Owner and Holder of the said note.

5. That no part of said note has been paid and there is now due and owing to Plaintiff thereon from the Defendants, the sum of Fifty Nine Thousand (\$59,000.00) Dollars, with interest thereon from the 14th day of September, 1962.

FOR A SECOND CAUSE OF ACTION
AGAINST THE DEFENDANT, JOAN
G. VAN DE MAELE -----

6. Plaintiff repeats and realleges the allegations contained in paragraphs "1" and "2" of the complaint herein.

7. That heretofore and on or about the 8th day of December, 1961, for value received, the Defendant, JOAN G. VAN DE MAELE, made and delivered to Plaintiff her promissory note in writing, a copy of which is annexed hereto as exhibit "B".

8. That the Plaintiff is now the Owner and Holder of the said note.

9. That no part of said note has been paid and there is now due and owing to Plaintiff thereon, from the Defendant, JOAN G. VAN DE MAELE, the sum of Seventeen Thousand (\$17,000.00) Dollars with interest thereon from the 8th day of June, 1962.

FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT, JOAN G.
VAN DE MAELE -----

10. Plaintiff repeats and realleges the allegations contained in paragraphs "1" and "2" of the complaint herein.

11. That heretofore and on or about the 8th day of December, 1961, for value received, the Defendant, JOAN G. VAN DE MAELE, made and delivered to Plaintiff her promissory note in writing a copy of which is annexed hereto as exhibit "C".

12. That Plaintiff is now the Owner and Holder of the said note.

13. That no part of said note has been paid and there is now due and owing to Plaintiff thereon from the Defendant, JOAN G. VAN DE MAELE, the sum of Fifth Thousand (\$50,000.00) Dollars, with interest from the 8th day of June, 1962.

FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS R.
O'CONNOR, AND A FOURTH CAUSE
OF ACTION AGAINST THE DEFENDANT,
JOAN G. VAN DE MAELE. -----

14. Plaintiff repeats and realleges the allegations of paragraphs "1" and "2" of the complaint herein.

15. That heretofore and on or about the 1st day of March, 1963, in consideration for granting to the Defendants an extension of time to pay the notes annexed hereto as exhibits "A", "B" and "C", the Defendants agreed to pay to Plaintiff the sum of Twenty Four Thousand (\$24,000.00) Dollars.

16. That no part of said amount has been paid although duly demanded, and there is now due and owing to the Plaintiff the sum of Twenty Four Thousand (\$24,000.00) Dollars.

FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS
R. O'CONNOR AND A FIFTH
CAUSE OF ACTION AGAINST THE
DEFENDANT, JOANG. VAN DE MAELE

17. Plaintiff repeats and realleges the allegations of paragraphs "1" and "2" of the complaint herein.

18. That at the instance and request of the Defendants, the Plaintiff incurred disbursements in the amount of One Thousand One Hundred Sixty Nine Dollars and fifty six cents (\$1,169.56) which the said Defendants agreed to pay.

19. That no part of said disbursements have been paid, although duly demanded, and there is now due and owing to the Plaintiff the sum of One Thousand One Hundred Sixty Nine Dollars and fifty six cents (\$1,169.56).

WHEREFORE, Plaintiff demands judgment against the Defendant JOAN G. VAN DE MAELE in the amount of One Hundred Fifty One Thousand One Hundred Sixty Nine (\$151,169.56) Dollars and fifty six cents, together with interest on Fifty Nine Thousand (\$59,000.00) Dollars thereof from the 14th day of September, 1962 and on Sixty Seven Thousand (\$67,000.00) Dollars thereof from the 8th day of June, 1962, and against the Defendant THOMAS R. O'CONNOR, in the amount of Eighty Four Thousand One Hundred Sixty Nine (\$84,169.56) Dollars and fifty six cents with interest on Fifty Nine Thousand (\$59,000.00) Dollars thereof from the 14th day of September, 1962 together with the costs of this action.

PHILIP HANDELMAN
Attorney Pro se
Office and Post Office Address
360 Lexington Avenue
New York 17, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PHILIP HANDELMAN,

Plaintiff,

-against-

JOAN G. VAN DE MAELE and THOMAS
R. O'CONNOR,

Defendants.

AMENDED ANSWER

The defendants, Joan G. Van de Maele and Thomas R. O'Connor, by their attorneys, Manning, Hollinger & Shea, answering the complaint herein:

AS TO THE FIRST CAUSE OF ACTION
AGAINST BOTH DEFENDANTS

1. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1 and 4 of the complaint.
2. Deny so much of paragraph 5 as states that there is now due and owing to plaintiff from defendants the sum of \$50,000 with interest thereon.

AS TO THE SECOND CAUSE OF ACTION
AGAINST DEFENDANT JOAN G. VAN DE
MAELE

3. Answering paragraph 6 of the complaint, repeats the answer heretofore made to paragraph 1 of the complaint with the same force and effect as if fully set forth herein.
4. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8 of the complaint.

Exhibit 9-I

Exhibit 9-I

5. Denies so much of paragraph 9 of the complaint as states that there is now due and owing to plaintiff from defendant Joan G. Van de Maele the sum of \$17,000 with interest thereon.

AS TO THE THIRD CAUSE OF ACTION
AGAINST DEFENDANT JOAN G. VAN
DE MAELE

6. Answering paragraph 10 of the complaint, repeats the answer heretofore made as to paragraph 1 of the complaint with the same force and effect as if fully set forth herein.

7. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 12 of the complaint.

8. Denies so much of paragraph 13 of the complaint as states there is now due and owing to plaintiff from defendant Joan G. Van de Maele the sum of \$50,000 with interest thereon.

AS TO THE SECOND CAUSE OF ACTION
AGAINST DEFENDANT THOMAS R. O'CONNOR
AND THE FOURTH CAUSE OF ACTION AGAINST
DEFENDANT JOAN G. VAN DE MAELE

9. Answering paragraph 14 of the complaint, repeat the answer heretofore made as to paragraph 1 of the complaint with the same force and effect as if fully set forth herein.

10. Deny each and every allegation contained in paragraph 15 of the complaint.

11. Deny so much of paragraph 16 of the complaint as states there is now due and owing to plaintiff the sum of \$24,000.

AS TO THE THIRD CAUSE OF ACTION
AGAINST DEFENDANT THOMAS R. O'CONNOR
AND THE FIFTH CAUSE OF ACTION AGAINST
DEFENDANT JOAN G. VAN DE MAELE

12. Answering paragraph 17 of the complaint, repeat the answer heretofore made as to paragraph 1 of the complaint with the same force and effect as if fully set forth herein.

13. Deny each and every allegation contained in paragraphs 18 and 19 of the complaint.

AS AND FOR A COMPLETE AFFIRMATIVE
DEFENSE TO THE FIRST CAUSE OF ACTION
AGAINST BOTH DEFENDANTS

14. On or about the 12th day of June, 1962, plaintiff and defendant Thomas R. O'Connor, individually and in a representative capacity, entered into a written agreement, a true copy of which is annexed hereto as Exhibit 1 and made a part hereof.

15. Paragraph 6 of said agreement provides:

"In the event of the non(sic)-payment of said FIFTY NINE THOUSAND (\$59,000) DOLLAR note, at its maturity, the escrowee will return the said twenty-five (25) shares to the Second Party."

16. The note referred to in the preceding paragraph is the note upon which plaintiff sues in his first cause of action.

17. By virtue of the provisions of paragraph 6 of the agreement of the 12th day of June, 1962, plaintiff's sole remedy for the nonpayment of the note is the return from the escrowee to him of the shares of stock referred to in said agreement.

AS AND FOR A COMPLETE AFFIRMATIVE
DEFENSE TO THE SECOND CAUSE OF ACTION
AGAINST DEFENDANT JOAN G. VAN DE NABELE

18. Repeats each and every allegation contained in paragraph 14 hereof with the same force and effect as if fully set forth herein.

19. Paragraph 5 of said agreement provides:

"In the event the full amount of said three notes totaling ONE HUNDRED FIFTEEN THOUSAND (\$115,000) DOLLARS is not paid on June 15, 1962, the escrowee shall return all papers and documents to PHILIP HANDELMAN."

20. One of the notes referred to in the preceding paragraph is the note upon which plaintiff sues in his second cause of action against defendant Joan G. Van de Maele.

21. By virtue of the provisions of paragraph 5 of the agreement of June 13, 1952, plaintiff's sole remedy for the non-payment of the note is the return from the said escrowee to him of the shares of stock referred to in said agreement.

AS AND FOR A COMPLETE AFFIRMATIVE
DEFENSE TO THE THIRD CAUSE OF ACTION
AGAINST THE DEFENDANT JOAN G. VAN DE
MAELE

22. Repeats and realleges each and every allegation contained in paragraphs 14, 19 and 21 hereof.

23. One of the notes referred to in paragraph 19 hereof is the note upon which plaintiff sues in his third cause of action against the defendant Joan G. Van de Maele.

AS AND FOR A FIRST COMPLETE AFFIRMA-
TIVE DEFENSE TO THE SECOND CAUSE OF
ACTION AGAINST THE DEFENDANT THOMAS
R. O'CONNOR AND THE FOURTH CAUSE OF
ACTION AGAINST DEFENDANT JOAN G. VAN
DE MAELE

24. On or about the 1st day of March, 1963, the parties entered into an agreement of purchase and sale of 88 shares of the outstanding stock of a corporation, Graphic Arts Exhibit Building Incorporated, for a total purchase price to be paid by the defendants to plaintiff of \$24,000 more than the purchase price for such of the 88 shares owned by plaintiff as set forth in the agreement of June 13, 1952 between plaintiff and defendant Thomas R. O'Connor, individually and in a representative capacity.

25. Said agreement provided that in the event that defendant Thomas R. O'Connor, individually and in a representative capacity, did not pay the consideration for the stock within a specified time, plaintiff's obligations to deliver the stock would terminate and neither party would have any liability or obligation to any other party.

26. Defendant Thomas R. O'Connor, individually and in a representative capacity, did not pay the consideration within the specified time and defendants have no obligation or liability to plaintiff.

AS AND FOR A SECOND COMPLETE AFFIRMATIVE DEFENSE TO THE SECOND CAUSE OF ACTION AGAINST DEFENDANT THOMAS R. O'CONNOR AND THE FOURTH CAUSE OF ACTION AGAINST DEFENDANT JOAN G. VAN DE MARLE

27. On or about the 1st day of March, 1963, plaintiff exacted from the defendants an agreement to pay a greater sum than at the rate of \$6.00 upon \$100.00 for one year, to wit, \$24,000, for granting to the defendants an extension of time to pay the notes annexed to the complaint as Exhibits A, B and C; that the agreement to pay the sum of \$24,000 is a corrupt and usurious agreement between the parties that the said usurious rate of interest should be paid and received for the extension of time to pay the aforementioned notes.

AS AND FOR A COUNTERCLAIM

28. Upon information and belief, plaintiff is a resident of the City, County and State of New York.

29. Defendants are residents of the City, County and State of New York.

30. Heretofore defendants loaned to plaintiff at his special instance and request the sum of \$105,500 which sum plaintiff promised and agreed to repay on demand.

31. On or about the 2nd day of July, 1963, defendants duly demanded repayment of said sum of \$105,500 by said plaintiff but plaintiff has paid no part of said sum and there is now justly due and owing to defendants from plaintiff the sum of \$105,500 with interest thereon from the 2nd day of July, 1963.

WHEREFORE, defendants demand judgment dismissing the complaint and on their counterclaim in the amount of \$105,500 with interest thereon from July 2, 1963 and the costs of this action.

MANNING, HOLLINGER & SHEA
Attorneys for Defendants
41 East 42nd Street
New York 17, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
PHILIP HANDELMAN,

Plaintiff,

-against-

JOAN C. VAN DE MAELE and
THOMAS R. O'CONNOR,

Defendants.
-----X

FINAL
JUDGMENT

Index No.
10493/1963

A motion having been duly made by the plaintiff at a Special Term, Part I of this Court, held at the County Court House, in the City of New York, on or about July 16, 1965, for summary judgment in favor of the plaintiff against the defendants, JOAN C. VAN DE MAELE and THOMAS R. O'CONNOR, pursuant to Rule 3212(a) of the CPLR, and an order of Mr. Justice Vincent A. Lupiano having been made and entered in the Office of the Clerk of this Court on December 7, 1965, which order, among other things, granted plaintiff's motion for summary judgment against the defendants with respect to plaintiff's First, Second and Third causes of action against the defendant JOAN C. VAN DE MAELE, and the First, Fourth and Fifth causes of action against the defendant THOMAS R. O'CONNOR, directed that judgment against the defendant JOAN C. VAN DE MAELE will await the final determination of certain issues raised on the motion for summary judgment, and further ordered that said issues and the plaintiff's second cause of action against the defendant THOMAS R. O'CONNOR and the Fourth cause of action against the defendant JOAN C. VAN DE MAELE be severed and continued, and which order directed that plaintiff may enter judgment against the defendant THOMAS R. O'CONNOR in the

Exhibit 10-J

Exhibit 10-J

amount of \$126,000 with interest on \$59,000 from September 14, 1962 and interest on \$67,000 from June 8, 1962, together with costs of this action, and the costs of the said plaintiff having been duly taxed by the clerk at \$ 32.50 .

NOW, on motion of PHILIP HANDELMAN, Esq., attorney pro se, it is

ADJUDGED, that the plaintiff, PHILIP HANDELMAN, residing at 5 Tudor City Place, New York, N. Y., recover of the defendant, THOMAS R. O'CONNOR, residing in New York, N. Y. the sum of \$126,000 with interest on \$59,000 from September 14, 1962 in the sum of \$10,926.20, and interest on \$67,000 from June 8, 1962 in the sum of \$13,363.16, together with \$ 32.50 costs and disbursements as taxed, making a total sum of \$ 150,321.94 , and that the plaintiff have execution therefor.

Judgment signed and entered this 27th day of January, 1966.

James McGurrian
Clerk

Filed
Jan. 27, 1966.
Co. Clerk's Office
New York

WHEREAS, an action was commenced by Philip Handelman (hereinafter called "Handelman") against Joan G. Van de Maele (hereinafter called "Van de Maele") and Thomas R. O'Connor (hereinafter called "O'Connor"), in the Supreme Court of the State of New York, County of New York, Index No. 10499/1963, in which Handelman sought a judgment against Van de Maele and O'Connor in the amount of \$151,169.56, which sum represented the balance of the purchase price due in connection with the sale of certain shares of Graphic Arts Exhibit Building, Inc., a New York Corporation, and

WHEREAS, an order was entered in said action on December 7, 1965 granting partial summary judgment to Handelman and ordering and directing that O'Connor and Van de Maele are liable on the promissory notes sued upon, and

WHEREAS, a judgment was rendered against O'Connor, dated January 27, 1966 in the amount of \$150,321.94, and judgment against Van de Maele was deferred pending the resolution of certain issues and disputes, and

WHEREAS, the parties desire to compromise and settle the aforesaid judgment and disputes,

IT IS HEREBY STIPULATED AND AGREED as follows:

1. O'Connor and Van de Maele shall forthwith pay to Handelman the sum of \$89,500.00.

Jt. Ex. 11-K

Jt. Exhibit 11-K

2. In consideration of the aforesaid payment, Handelman shall forthwith deliver to Jesse Cohen, the attorney for O'Connor and Van de Maele, the following documents:

- (a) Promissory notes dated December 8, 1961 in the sum of \$17,000; December 8, 1961 in the sum of \$50,000; June 13, 1962 in the sum of \$59,000.
- (b) Satisfaction of the aforesaid Judgment.
- (c) Stipulation of Discontinuance of the aforesaid pending action.
- (d) Certificate No. 16 representing 24 shares and Certificate No. 17 representing 39 shares of the capital stock of Graphic Arts Exhibit Building, Inc.
- (e) General Releases.

3. O'Connor and Van de Maele shall deliver to Handelman General Releases.

Dated: April 14, 1970

/s/
PHILIP HANDELMAN

/s/
JESSE COHEN
Attorney for Thomas R. O'Connor
and Joan G. Van de Maele

the receipt whereof is hereby acknowledged, have remised, released, and forever discharged and by these presents do for myself, my heirs, executors, and administrators and assigns, remise, release and forever discharge the said

heirs, executors, administrators, successors and assigns of and from all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against

ever had, now have or which I or my heirs, executors, or administrators, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

1540

described in, and who executed the foregoing;
executed the same



Jt. Exhibit 13-M

NUMBER

SHARES
-25-



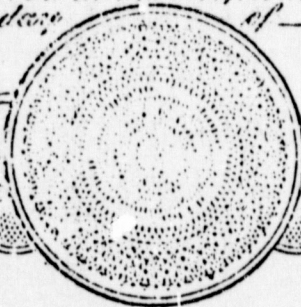
INCORPORATED UNDER THE LAWS OF THE STATE OF NEW YORK
Graphic Arts Exhibit Building, Incorporated
200 SHARES WITH \$100 PAR VALUE

Philip Handelman is the
registered holder of twenty-five Shares

of the Capital Stock of Graphic Arts Exhibit Building, Incorporated Fully Paid and Non-Assessable
Transferable only on the books of the Corporation by the holder hereof in
person or by attorney upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed
by its duly authorized officers and its Corporate Seal to be hereunto affixed
this 13th day of June A.D. 1962

Paula Brecker
SECRETARY-TREASURER



A. Albert Blum
PRESIDENT

GRAPHIC ARTS EXHIBIT BUILDING, INCORPORATED, N. Y.

Jt. Ex. 13-M

At a Special Term, Part I. of the
Supreme Court of the State of New York,
held in and for the County of New York,
at the Court House thereof, No. 60
Centre Street, Borough of Manhattan,
City of New York, County and State of
New York, on the 7th day of December,
1965.

PRESENT:

HON. VINCENT A. LUPLANO

Justice.

-----x

PHILIP HANDELMAN,

Plaintiff,

Index No. 10499/1963

-against-

ORDER

JOAN G. VAN DE MAELE and
THOMAS R. O'CONNOR,

Defendants.

-----x

A motion having been made by the plaintiff for an order
dismissing the defendants' affirmative defenses on the grounds that
they are insufficient in law, and for an order awarding summary
judgment to the plaintiff in the amount of \$150,000.00,

NOW, upon reading and filing the Notice of Motion dated
July 16, 1965, the affirmations of PHILIP HANDELMAN dated July 16,
1965, August 17, 1965 and September 1, 1965, the pleadings and
exhibits annexed, all in support of said motion, and the affidavit
of JOAN G. VAN DE MAELE, verified the 13th day of August, 1965
and the affidavit of THOMAS R. O'CONNOR, verified August 13, 1965,

Exhibit 14-N .

Exhibit 14-N

and exhibits annexed, and the reply affidavit of JOAN G. VAN DE MAELE verified August 26, 1965, all in opposition to the motion, and the plaintiff having appeared by ROBERT M. TRIEN, ESQ., and the defendant having appeared by JESSE COHEN, ESQ., and a decision having been rendered thereon.

Upon motion of PHILIP HANDELMAN, attorney pro se,
it is

ORDERED, that the affirmative defenses alleged by the defendants are insufficient in law, and are stricken, and it is further

ORDERED, that the plaintiff's motion for summary judgment against the defendants is granted with respect to plaintiff's First, Second and Third Causes of Action against the defendant JOAN G. VAN DE MAELE, and the First, Fourth and Fifth Causes of Action against the defendant THOMAS R. O'CONNOR, and it is further

ORDERED, that the defendants are liable on the three notes sued upon, in the total amount of \$126,000.00, and it is further

ORDERED, that the motion for summary judgment, with respect to plaintiff's Second Cause of Action against the defendant THOMAS R. O'CONNOR and Fourth Cause of action against JOAN G. VAN DE MAELE is denied, and it is further

ORDERED, that the plaintiff may enter judgment against the defendant THOMAS R. O'CONNOR in the amount of

\$126,000.00 with interest on \$59,000.00 from September 14, 1962 and interest on \$67,000.00 from June 8, 1962, together with costs of this action, and it is further

ORDERED that any judgment against the defendant JOAN G. VAN DE MAELE will await the final determination of the issues with respect to her claim of payment by unpaid and past due advances made to plaintiff, and it is further

ORDERED, that the plaintiff's Second Cause of Action against the defendant THOMAS R. O'CONNOR and the Fourth Cause of Action against the defendant JOAN G. VAN DE MAELE, and that the issues with respect to the defendant JOAN G. VAN DE MAELE'S claim of payment, be severed, and continued; and it is further

ORDERED that defendant, JOAN G. VAN DE MAELE amend her answer to conform to the defenses and counterclaims asserted in her affidavits in opposition to this motion, within ten days after service of a copy of this order with notice of entry.

ENTER:

V. L.

FILED
12/7/65
NEW YORK COUNTY
CLERK'S OFFICE

CT-96A (8/71)

New York State Department of Taxation and Finance
Corporation Tax Bureau, State Campus, Albany, N. Y. 12227
TAX STATUS - ARTICLES 9, 9A, 9B, & 9C, TAX LAW

Name of Corporation: GRAPHIC ARTS EXHIBIT BUILDING INC. Search Date: 12-10-71
Incorporated: 1-20-61
Paid Tax Through: 12-31-61 DISSOLVED BY PROCLAMATION 1965
Owes Tax: _____

TAX RETURNS HAVE BEEN FILED ONLY FOR PERIODS LISTED ABOVE. See Lien Date Information on Back

Mr. Frank Eagle

ST. TAX OFFICIAL ONLY
WHEN PERFORATED

12-10-71

EX 15-0

State of New York }
DEPARTMENT OF STATE } ss.:

It is Hereby Certified, That the records of this Department show that

GRAPHIC ARTS EXHIBIT BUILDING, INCORPORATED,

the Certificate of Incorporation of which was filed on the twentieth day of January, 1961, was dissolved by proclamation of the Secretary of State published on the fifteenth day of December, 1965, pursuant to Section 203-A of the Tax Law and that such dissolution has not been annulled.

Witness my hand and the official seal of the
Department of State at the City of
Albany, this ninth day
of December one thousand
nine hundred and seventy-one.

John P. Lomenzo
Secretary of State

Exhibit 16-P

~~Exhibit J~~

NEW YORK, ARCH 26 1962 No

6249 112

CHEMICAL BANK NEW YORK TRUST COMPANY

52ND STREET & MADISON AVENUE
NEW YORK

1-12
210

PAY TO THE ORDER OF CHEMICAL BANK NEW YORK TRUST COMPANY \$ 10,000.00

PAID

112,000.00

DOLLARS

APR 8 1962

COMPANY

Alway

AUTHORIZED SIGNATURE

001000120 000 1120110

Exhibit 17-C

CHEMICAL BANK NEW YORK TRUST COMPANY

INTERNATIONAL DIVISION

NEW YORK

CREDIT TICKET 2

DATE FEB 20, 1962 AC

100-103719

120-000-00

→ A/C NO. 1

E M HANDELMAN
205 MADISON AVE
NEW YORK, NY

DETAILS

CREDIT

RECEIVED
FROM

[illegible]

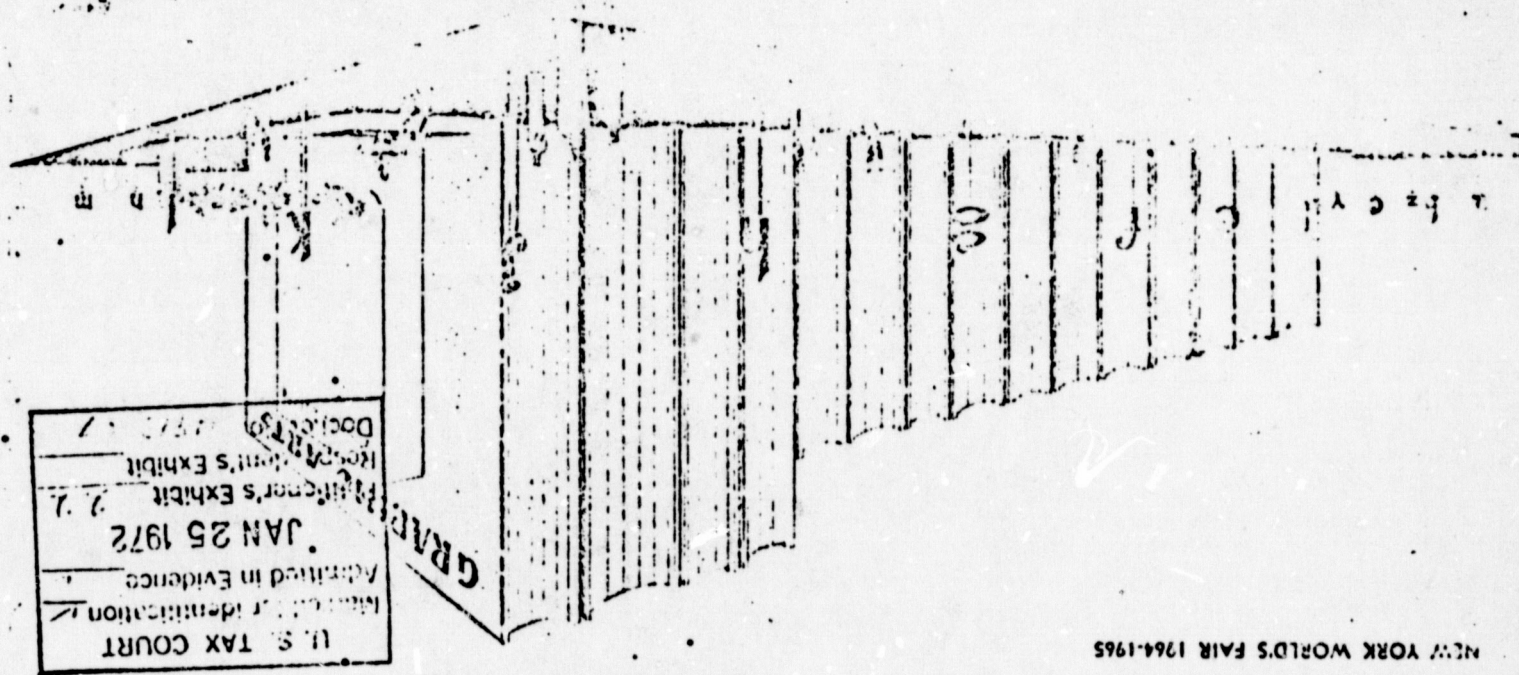
INSTRUCTIONS
AS PER THEIR

TELE FILE 25 MAR 68 JCL

Credit of
Philip H. H. H.

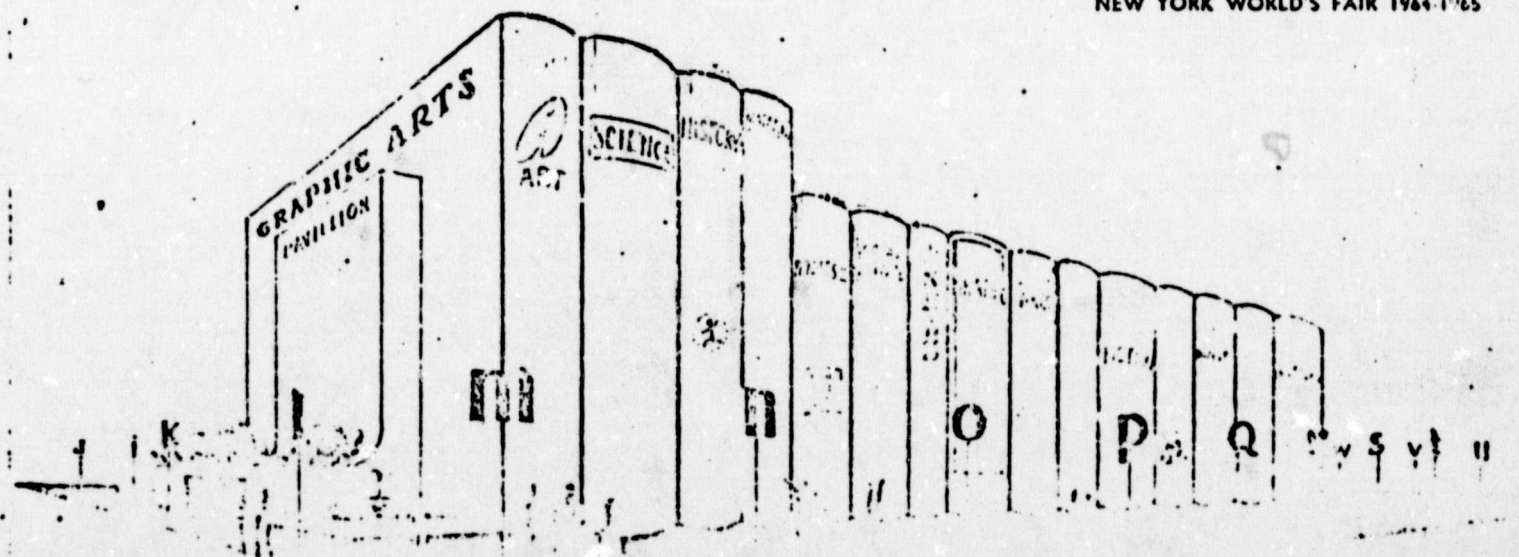
Ex. 22

Ex. 22



NEW YORK WORLD'S FAIR 1964-1965

NEW YORK WORLD'S FAIR 1964-1965



THE NEW YORK WORLD'S FAIR 1964-1965 CORPORATION
Administration Building—Flushing Meadow Park—Flushing 52, New York

APPLICATION FOR A PERMIT TO CONSTRUCT A

FOUNDATION

This application to be submitted to the Fair Corporation to secure a permit to construct a foundation for a new building or altered building in advance of approval of entire project as permitted by section 21.22 of the World's Fair Building Code. This application to be typewritten, submitted in quintuplicate, and accompanied by drawings in quintuplicate.

NAME OF EXHIBIT <u>CLASSIC ARTS EXHIBIT PAVILION</u>	Supplement to Application
BLOCK <u>8</u> LOT <u>4</u>	NO 75
SUBMITTED BY <u>EDWARD A. WEED</u>	RECEIVED FEB 26 1963
	(Do not write in this space)

To The New York World's Fair 1964-1965 Corporation:

Application is hereby made for approval of the drawings submitted with the above indicated application with regard to foundation work and for a permit to construct the foundation in advance of the approval of final drawings for the structure.

Applicant states that the work under this permit will be conducted under the supervision of a New York State registered architect or licensed professional engineer who shall approve the soil for bearing capacity, or in case of piles shall approve the bearing capacity of the piles as driven, as not being less than that used in the design. Certification of such satisfactory conditions shall be furnished to the Fair Corporation with the application for a Certificate of Occupancy. Where this work involves the use of piles, Form No. 23, Pile Driving Report, will be prepared and submitted to the Fair Corporation.

Applicant has been authorized by the prime exhibitor of the structure to make this application in his behalf and agrees that in the event full examination of drawings discloses that pile caps, foundation or footings do not agree with the requirements of the New York World's Fair 1964-1965 Building Code, the exhibitor will remove those portions contrary to the requirements and reconstruct same in accordance with the Code.

Applicant agrees that this application, if approved, is to become a part of the above indicated application and subject to all the conditions and statements therein contained and to all the amendments thereto.

Exceptions are as follows: (if none type "none")

NONE

Date FEBRUARY 22, 1963 Applicant's Name EDWARD A. WEED
Reg. or Lic. No. 1001 Address 111 MADISON AVENUE, N. Y. 17, N. Y.
Signature [Signature] ARL: Soil

APPLICANT SHALL NOT WRITE BELOW THIS LINE

VERIFICATIONS: Engr. Coord. VERIFIED MAR 11 1963 Main. & Sec. VERIFIED MAR 11 1963
Insurance VERIFIED MAR 11 1963 Compt. (Fee) VERIFIED MAR 11 1963

Application examined and recommended for issuance of a permit:

Signed APPROVED MAR 13 1963 Date

PERMIT

is hereby issued to perform the foundation work at the above location on the condition that applicable laws and rules be complied with. Subject to attached Report of Examination.

Signed [Signature] Date MAR 22 1963
Office of The Fair Corp.

Not valid unless signed by an authorized representative of the New York World's Fair 1964-1965 Corporation.

COPY OF THIS PERMIT AND APPROVED DRAWINGS MUST BE KEPT AT WORK SITE UNTIL CONSTRUCTION IS COMPLETED

- 35 -
SUPREME COURT, NEW YORK COUNTY
SPECIAL TERM, PART I

JAN 25 1972

Respondent's Exhibit
24-R
Docket No. _____

----- x
PHILIP HANDELMAN,

Plaintiff,

-against-

JOAN G. VAN DE MAELE and THOMAS R.
O'CONNOR,

Index No.
10499/1963

Defendants.
----- x

LUPIANO, J.:

Plaintiff moves for summary judgment in the sum of \$150,000. The claimed debt is evidenced by three notes aggregating \$126,000. The remainder of the claim is alleged to be the balance of the purchase price of certain stock sold by the plaintiff to the defendants. The making of the notes on behalf of the defendants is not disputed. The legal effect is disputed on theories set out in defense which were urged by the defendants in a companion action instituted against them by one A. Alfred Solomon. The defenses were considered by the Appellate Division and summary defenses was awarded to the plaintiff (Solomon v. Van De Maele et al., 21 AD 2d 396). The defendants here urge the additional defenses of no consideration, and that in the event of nonpayment of the notes the stock was to be redelivered by the escrowee and held by plaintiff as the owner thereof. In effect, it is contended that there was in fact no sale. These defenses are integrated with those considered by the Appellate Division in the companion action, and as there stated, these defenses are also commercially incredible.

It is urged, however, that the defendant Van De Maele has made payment in that she has advanced at stated times certain sums of money to the plaintiff in an amount in excess of the

Ex. 24-R

demand in suit and such debts are due and unpaid. Also, as already indicated, the purchase price to the extent of \$24,000 thereof is not proved by document and remains in issue. Accordingly, all issues are determined in favor of the plaintiff and adversely to the defendants, save with respect to the issue raised by the claim of payment by defendant Van De Maele and the issue raised with respect to the sum of \$24,000. Accordingly defendants are adjudged to be liable on the notes, and plaintiff may enter judgment thereon against the defendant O'Connor. Entry of any judgment against the defendant Van De Maele will await final determination of the severed issues with respect to her claim of payment by unpaid and past due advances made to plaintiff and as to the claimed balance of purchase price. The motion is disposed of accordingly. Settle order providing for severance.

Dated, October 18, 1965.

J.S.C.

[FILED DEC 7 - 1965]

In re:

vs.

— against —

The following papers numbered 1 to _____ are in this motion.

No. _____ on Calendar of _____

PAPER NUMBERED

Notice of Motion — _____ and _____

Answering Affidavit _____

Replying Affidavit _____

Affidavit _____

Affidavit _____

Pleadings — Exhibit **DO NOT FILE RETURN TO COUNSEL**

Stipulation — Referee's Report — Minutes _____

Filed Papers _____

Upon the foregoing papers this motion is disposed of in accordance with decision in accompanying memorandum opinion.

250

DEC 7 - 1965

COUNTY CLERK'S OFFICE

DEC 18 1965

Dated _____

J.S.C.

Briefs: Plaintiff's _____ Defendant's _____ Petitioner's _____ Respondent's _____ Relator's _____

Brief _____

County Clerk's No. _____, 1963

Spec 1 Fee _____, 1965

[Cover page and affidavit of service omitted.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
PHILIP HANDELMAN,

Plaintiff,

-against-

NOTICE OF
MOTION

JOAN G. VAN DE MAELE and THOMAS R.
O'CONNOR,

Defendants.
-----x

SIR:

PLEASE TAKE NOTICE that upon the annexed affirmation of Philip Handelman dated July 16, 1965, and upon all the pleadings and proceedings heretofore had, the undersigned will move this Court at Special Term, Part I thereof, to be held at the courthouse at Foley Square on the /8 day of August, 1965 at 9:30 A. M. of that day or as soon thereafter as counsel can be heard for an order pursuant to CPLR R. 3211(b) dismissing the defendants' affirmative defenses on the grounds that they are insufficient in law, and pursuant to CPLR R. 3212 awarding summary judgment to the plaintiff in the amount of \$150,000, and for such other and further relief as to this Court may seem just.

PLEASE TAKE FURTHER NOTICE, that you are hereby required to serve all answering affidavits within five days of the return date hereof.

Dated: New York, New York
July 16, 1965

Yours, etc.

PHILIP HANDELMAN
Attorney Pro Se
Office & P. O. Address
360 Lexington Avenue
New York 17, New York

TO: JESSE COHEN
Attorney for Defendants
295 Madison Avenue
New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----x
PHILIP HANDELMAN,

Plaintiff,

-against-

AFFIRMATION

JOAN G. VAN DE MAELE and THOMAS R.
O'CONNOR,

Defendants.
-----x

PHILIP HANDELMAN, attorney pro se for plaintiff, an attorney at law, hereby affirms the following under the penalties of perjury:

I make this affirmation in support of the within application to strike the defendants' defenses and for summary judgment against both defendants in the amount of \$150,000. The causes of action alleged in the complaint are based upon three written promissory notes in the respective amounts of \$59,000, \$17,000 and \$50,000, which notes were executed and delivered by the defendants as partial payment of the purchase price for certain stock in the Graphic Arts Exhibit Building, Inc., a New York Corporation. In addition there is due and owing to me the amount of \$24,000 which was the balance of the agreed purchase price for the stock.

The three notes are annexed to plaintiff's amended complaint as Exhibits A, B and C. A copy of said complaint is annexed hereto as Exhibit 1. Those notes constitute the basis for the first cause of action against both defendants, the second and third causes of action against the defendant Van De Maele and the fourth and fifth causes of action against the defendant O'Connor. The allegations with respect to

the agreed amount of \$24,000 are contained in the second cause against both defendants. Plaintiff is not here seeking judgment on the causes of action alleged in 17 through 19 of the amended complaint, since those causes of action involve factual matters upon which there is a substantial dispute between the parties.

The \$59,000 note (Exhibit A to the amended complaint) was signed by both O'Connor and Van De Maele, while the \$17,000 and \$50,000 notes (Exhibits B and C to the amended complaint) are signed only by Van De Maele. The plaintiff has alleged that defendant O'Connor in addition to being liable on the note signed by him, is liable on the latter two notes since Van De Maele signed them on behalf of herself and O'Connor who were engaged in a partnership or co-venture to purchase the Graphic Art's stock (see amended complaint, paragraphs 20 through 28). The defendants admit that Van De Maele signed the notes on behalf of herself and O'Connor (see paragraphs 18 and 19 of defendants' answer to the amended complaint, a copy of which is annexed hereto as Exhibit 2) so that there is no question but that since there are no valid defenses to the three notes, both defendants are liable thereon.

Defendants in their amended answer do not deny (and consequently admit) that they are the makers of the notes, that the notes were delivered to the plaintiff and that no part of the notes has been paid. The defendants' denial that there is now due and owing to the plaintiff the sum of \$150,000 is based on their various affirmative defenses which are summarized below:

1. They deny that there was any consideration for the three notes.

2. With respect to the three notes the defendants allege that certain provisions in an escrow agreement relieves them from any liability on the notes. That agreement was entered into by the parties for the purpose of facilitating the delivery to the defendants of certain stocks which they had purchased and provided that the escrowee to whom defendant delivered his stock would return that stock to the plaintiff in the event of the defendants' failure to pay the notes. Defendants claim that the plaintiff's sole remedy for the non-payment of the notes was the return of the shares of stock and that they were not to be held liable on the notes if they did not pay them (defendants' answer, paragraph 20 through 29 and paragraphs 37 through 40).

3. With respect to all three notes, the defendants allege an oral agreement to the effect that the three notes, which were given to the plaintiff "solely as a means of securing payment for the stocks plaintiff had agreed to deliver" were to be returned to the defendants in the event of their default in paying them (defendants' answer, paragraphs 30 through 32, paragraphs 41 through 43), and that if the defendants within a specified time, did not pay for the stock which they had purchased, plaintiff's obligation to deliver the stock would terminate and neither party would have any liability or obligation to the other party (paragraphs 47 through 49).

4. As an alternative to their claim that the parties agreed that the notes were to be returned to the defendants upon their default, the defendants allege that if their agreement is not so construed then the collection of said notes would represent a penalty and is therefore not enforceable (defendants' answer, paragraphs 33 through 36, 44 through 46).

5. With respect to agreement on the part of the defendants to pay \$24,000 (in addition to the notes) as the balance of the purchase price for the shares of stock involved, the defendants allege that said amount constitutes interest at a usurious rate and that the agreement is therefore void (defendants answer, paragraph 15).

At the same time that I negotiated with the defendants for the sale to them of the stock which I owned, I also represented Dr. A. Alfred Solomon, in the sale of his Graphic Art's stock to the defendants. The defendants also issued a note to Dr. Solomon in payment of their contractual obligations to him on which note they defaulted as in the instant situation. A companion suit was instituted by me on Dr. Solomon's behalf against the defendants in the Supreme Court, New York County, which suit is entitled "A. Alfred Solomon, plaintiff, vs. Joan Van De Maele and Thomas R. O'Connor, defendants, index no. 10498/63." In that suit/which the factual background was the same as it is here, defenses numbered 2, 3 and 5 above were interposed. The Appellate Division, reversing special term, struck those defenses from the defendants answer and awarded summary judgment to the plaintiff in the amount of \$58,000 (Solomon v. Van De Maele, 21 A.D. 2d 306, 250 NY 2d 172). The court held that the express absolute obligation to pay which is contained in a promissory note 'cannot be contradicted by parol evidence of a condition permitting subsequent termination.' Also with regard to the defense of usury which the defendant asserted there as they do in the case at bar, the Appellate Division held "this is not a usury situation. Nothing akin to borrowing or lending money is involved." The Appellate Division, commenting on the same affirmative defenses

which are interposed here, concluded:

"Defendants assertions, moreover, are not only commercially incredible and unsupported by any writing, but they are insufficient in law."

In an obvious attempt to avoid the effect of the Appellate Division's decision in which the exact same affirmative defenses as were interposed in this action were held to be legally insufficient, the defendants served an amended answer which, in addition to the original defenses (numbered 2, 3 and 5 above), included two new alleged defenses (numbered 1 and 4 above). Those two defenses are just as "commercially incredible" and "insufficient in law" as the original defenses.

THE FACTS

In or about December 1961 the defendants agreed to purchase from the plaintiff 50 shares of the capital stock of Graphic Arts Exhibit Building, Inc., a New York Corporation, which was formed for the purpose of building a Pavilion at the 1964/1965 New York World's Fair, which pavilion was to house exhibits relating to the Graphic Arts industry. They also, at that time, agreed to purchase 24 shares from Dr. Solomon, the plaintiff in the aforementioned suit. In payment to me of a portion of the agreed upon purchase price, the defendant Van De Maele executed two notes dated December 8, 1961, one in the amount of \$50,000 (Exhibit C to the amended complaint), and another in the amount of \$17,000 (Exhibit D to the amended complaint). Said notes were made to the order of the plaintiff, to whom they were delivered, and each note was due on June 8, 1962. The notes were presented to the Meadow Brook National Bank, 1230 Sixth Avenue, New York, New York, which is where they were payable, and as appears from the protests which are annexed hereto as Exhibits 3 and 4, those notes were not paid. As is indicated on the

two protests, the reason given for non-payment was "insufficient funds."

Five days after the defendants defaulted on the payment of the two notes, they executed and delivered to the plaintiff a third note in the amount of \$59,000 (Exhibit A to the amended complaint). That note was, by its terms, due on September 14, 1963 and was not paid on the due date, nor was it ever paid.

On the same date that the \$59,000 note was made, to wit, on June 13, 1962, the defendant O'Connor "for himself and in representative capacity" entered into an escrow agreement with the plaintiff. A copy of that agreement is annexed to the defendants' answer as Exhibit 1. Pursuant to the terms of that agreement, the defendants were assured of the delivery of the shares of stock which they had purchased, upon their payment of the two defaulted notes and the new note. That assurance was given by way of an agreement to deliver the stock to an officer of the Chemical Bank who was named as an escrow agent. The escrow agent was to deliver the stock to the defendants upon the payment of the three notes, provided that the December, 1961 notes were paid by June 15, 1962, in which event certain shares of Graphic Art stock would be delivered to the defendants, and provided that the June 13, 1962 note was paid on or before its due date, in which event certain other shares would be delivered to the defendants.

In paragraph 2 of that agreement, O'Connor, on behalf of himself and Van De Maele acknowledges that he "is indebted to (the plaintiff and Dr. Solomon) in the amount of \$174,000, represented by four (4) non-interest bearing promissory notes in the following sums. "

The agreement then lists the 3 notes in suit, in addition to the note that had been delivered to Dr. Solomon.

In paragraphs 5 and 6 of the agreement, the escrow agent was directed to return all papers and documents to the plaintiff in the event that the December, 1961 notes which had already been defaulted upon were not paid by June 15, 1962. The agreement also set forth representations by the plaintiff and other persons who were selling their stock in the company to the defendants as to the corporation's outstanding obligations, certain warranties and covenants by the sellers with respect to the sale, and other matters.

The defendants did not pay the December notes by June 15, 1962 as was agreed. By subsequent letter of agreement dated July 6, 1962 the parties agreed to extend the closing date provided for by the June 13th agreement to July 11, 1962. A copy of that letter agreement is annexed hereto as Exhibit 5. The defendants failed to pay the note by the agreed date.

Over 8 months after the defendants' default on the two December, 1961 notes, and over five months subsequent to their default on the \$59,000 note, the defendants told the plaintiff that they still wanted the stock and, after negotiation, they agreed to pay an additional \$24,000 in order to acquire it. Thereafter, and pursuant to that agreement, I again placed my stock in escrow with the Bankers Trust Company in accordance with the terms of a new escrow agreement dated March 14, 1963. A copy of that escrow agreement signed by the Assistant Secretary of the Bankers Trust Company is annexed hereto as Exhibit 6. That agreement by its terms expired on March 15, 1963 at 3:00 P. M. As a further accommodation to the defendants, I again placed the stock certificates in escrow with the Bankers Trust Company

pursuant to an agreement dated March 20, 1963, a copy of which is annexed hereto as Exhibit 7. That agreement by its terms was to expire on March 25, 1963 at 3:00 P. M. in the event that the amount of \$150,000 (the total of the three notes plus the \$24,000 amount agreed upon as aforesaid) were not paid by that date. No payments were made and the stock certificates which had been delivered to the Bankers Trust Company were returned to me. The exact same arrangements had been made with Dr. Solomon's stock.

Subsequently, after the defendants' aforementioned failure to live up to the escrow agreements, they requested that the stock again be placed in escrow in Dallas Texas where the defendants represented that they were obtaining funds to discharge their obligations under the aforesaid notes and their agreement. Pursuant to that request, I sent the stock certificates and the notes to an individual in Texas, in escrow. The defendants again failed to fulfill their obligations under the notes and agreement, and the certificates and notes were returned to the plaintiff.

There is and can be no dispute with regard to the basic facts set forth above. Indeed the extensive examination before trial of the two defendants reveal that there is no disagreement. Further, substantially similar facts were presented to the Appellate Division, First Department in the Solomon case referred to above, in which case summary judgment was awarded to the plaintiff in the amount there involved.

As is set forth in the memorandum to be submitted herewith, the decision of the Appellate Division effectively disposes of the defendants' defenses listed above as numbers 2, 3 and 5. The two new defenses set

✓ forth in the defendants amended answer in a belated attempt to avoid summary judgment are completely frivolous and are not borne out by the undisputed facts. In summary the alleged affirmative defenses are insufficient in law for the following reasons.

a. With regard to the alleged defense that the notes were not issued "for value," i. e. that there was no consideration for them, that contention has no merit in light of the undisputed fact that the parties had an agreement whereby the plaintiff contracted to sell and the defendants contracted to purchase certain shares of stock for an agreed price. The consideration for the notes was the plaintiff's agreement to sell the stock. It has long been held that such an agreement constitutes valid consideration.

b. The allegations to the effect that the parties agreed that if the defendants defaulted on the notes, they would not be liable to pay them, and that the plaintiff's sole remedy was the return of his stock, is totally insufficient in law since, as the Appellate Division held in the Solomon case, the parol evidence rule excludes proof of such an agreement. In the light of the undisputed facts, Judge Breitell's defense characterization of this/as being "commercially incredible" is particularly apt.

c. The defendants' newest contention that the collection of the notes would represent an unenforceable penalty is ridiculous. The defendants agreed to buy stock at a certain price, and issued notes for a portion of that price. The plaintiff tendered the stock on numerous occasions by delivering it to an escrow agent who, in accordance with binding escrow agreements was directed to deliver the stock to the

defendants upon payment of the notes. The defendants failed to pay and the plaintiff is now suing on those notes. There is no "penalty" involved, unless by that phrase the defendants are characterizing the law's requirement that they fulfill their agreements which were entered into freely and fairly. Certainly, when the defendants pay the agreed price for the stock (which they have failed to do voluntarily), they will be entitled to the delivery of the stock, which is exactly what they bargained for.

d. The defendants' contention that their agreement to pay an additional \$24,000 for the stock constitutes an unenforceable usurious transaction was effectively disposed of by Judge Breitel in the Appellate Division's decision awarding summary judgment in the Solomon case. He simply pointed out that "this is not forbearance of a money debt; instead, it is a sale of goods transaction."

In view of the above and in view of the fact that the affirmative defenses set up by the defendants are completely frivolous and insufficient in law, summary judgment should be awarded to the plaintiff in the amount of \$150,000.

WHEREFORE, your deponent respectfully requests that summary judgment be awarded to the plaintiff in the amount of \$150,000 with interest from the due dates of the respective notes and with interest on \$24,000 from March 1, 1963.
Dated: New York, New York
July 16, 1965

Philip Handelman
PHILIP HANDELMAN

SUPREME COURT: NEW YORK COUNTY

-----x

PHILIP HANDELMAN,

Plaintiff,

-against-

AMENDED COMPLAINT

JOAN G. VAN DeMAELE and
THOMAS R. O'CONNOR,

Index No. 10499/63

Defendants.

-----x

PHILIP HANDELMAN, as and for his amended complaint,
alleges:

FOR A FIRST CAUSE OF ACTION
AGAINST BOTH DEFENDANTS

1. That at all times hereinafter mentioned, the plaintiff was, and still is, a resident of the City, County and State of New York.
2. That at all times hereinafter mentioned, the defendants were, and still are, residents of the City, County and State of New York.
3. That heretofore and on or about the 13th day of June, 1962, for value received, defendants made and delivered to plaintiff their promissory note in writing, a copy of which is annexed hereto as Exhibit "A".
4. That plaintiff is now the owner and holder of the said note.
5. That no part of said note has been paid, and there is now due and owing to plaintiff thereon from the defendants the sum of Fifty Nine Thousand (\$59,000.00) Dollars, with interest thereon from the 14th day of September, 1962.

FOR A SECOND CAUSE OF ACTION
AGAINST THE DEFENDANT, JOAN
G. VAN DE MAELE

6. Plaintiff repeats and realleges the allegations contained in paragraphs "1" and "2" of the complaint herein.

7. That heretofore and on or about the 8th day of December, 1961, for value received, the defendant, JOAN G. VAN DE MAELE, made and delivered to plaintiff her promissory note in writing, a copy of which is annexed hereto as Exhibit "B".

8. That the plaintiff is now the owner and holder of the said note.

9. That no part of said note has been paid and there is now due and owing to plaintiff thereon, from the defendant, JOAN G. VAN DE MAELE, the sum of Seventeen Thousand (\$17,000.00) Dollars with interest thereon from the 8th day of June, 1962.

FOR A THIRD CAUSE OF ACTION
AGAINST DEFENDANT, JOAN G.
VAN DE MAELE

10. Plaintiff repeats and realleges the allegations contained in paragraphs "1" and "2" of the complaint herein.

11. That heretofore and on or about the 8th day of December, 1961, for value received, the defendant, JOAN G. VAN DE MAELE, made and delivered to plaintiff her promissory note in writing, a copy of which is annexed hereto as Exhibit "C".

12. That plaintiff is now the owner and holder of the said note.

13. That no part of said note has been paid and there is now due and owing to plaintiff thereon from the defendant, JOAN G. VAN DE MAELE, the sum of Fifty Thousand (\$50,000.00) Dollars, with interest from the 8th day of June, 1962.

FOR A SECOND CAUSE OF ACTION
AGAINST DEFENDANT, THOMAS R.
O'CONNOR, AND A FOURTH CAUSE
OF ACTION AGAINST THE DEFENDANT,
JOAN G. VAN DE MAELE

14. Plaintiff repeats and realleges the allegations of paragraphs "1" and "2" of the complaint herein.

15. That heretofore and on or about the 1st day of March, 1963, in consideration for granting to the defendants an extension of time to pay the notes annexed hereto as Exhibits "A", "B" and "C", the defendants agreed to pay to plaintiff the sum of Twenty Four Thousand (\$24,000.00) Dollars.

16. That no part of said amount has been paid, although duly demanded, and there is now due and owing to the plaintiff the sum of Twenty Four Thousand (\$24,000.00) Dollars.

FOR A THIRD CAUSE OF ACTION AGAINST
DEFENDANT, THOMAS R. O'CONNOR, AND
A FIFTH CAUSE OF ACTION AGAINST THE
DEFENDANT, JOAN VAN DE MAELE

17. Plaintiff repeats and realleges the allegations of paragraphs "1" and "2" of the complaint herein.

18. That at the instance and request of the defendants, the plaintiff incurred disbursements in the amount of One Thousand One Hundred Sixty Nine Dollars and fifty-six cents (\$1,169.56) which the said defendants agreed to pay.

19. That no part of said disbursements has been paid, although duly demanded, and there is now due and owing to the plaintiff the sum of One Thousand One Hundred Sixty-nine Dollars and fifty-six cents (\$1,169.56).

FOR A FOURTH CAUSE OF ACTION AGAINST
THE DEFENDANT, THOMAS R. O'CONNOR

20. Plaintiff repeats and realleges the allegations contained in paragraphs "1" and "2" of the complaint herein.

21. That at all relevant times, defendants were partners or co-venturers, which partnership or co-venture was entered into for the purpose of acquiring certain stock of Graphic Arts Exhibit Building, Inc., a New York corporation.

22. That heretofore and on or about the 8th day of December, 1961, for value received, the defendant, JOAN G. VAN DE MAELE, on behalf of herself, THOMAS R. O'CONNOR and the partnership or co-venture, made and delivered to plaintiff her promissory note in writing, a copy of which is annexed hereto as Exhibit B.

23. That plaintiff is now the owner and holder of said note.

24. That no part of said note has been paid, and there is now due and owing to plaintiff thereon from the defendant, THOMAS R. O'CONNOR, the sum of Seventeen Thousand (\$17,000.00) Dollars with interest thereon from the 8th day of June, 1962.

FOR A FIFTH CAUSE OF ACTION
AGAINST THE DEFENDANT,
THOMAS R. O'CONNOR

25. Plaintiff repeats and realleges the allegations contained in paragraphs "1", "2" and "21".

26. That heretofore and on or about the 8th day of December, 1961, for value received, the defendant, JOAN VAN DE MAELE, on behalf of herself, THOMAS R. O'CONNOR and the aforesaid partnership or co-venture, made and delivered to plaintiff her promissory note in writing, a copy of which is annexed hereto as Exhibit "C".

27. That plaintiff is now the owner and holder of said note.

28. That no part of said note has been paid, and there is now due and owing to plaintiff thereon from the defendant, THOMAS R. O'CONNOR, the sum of Fifty Thousand (\$50,000.00) Dollars, with interest

from the 8th day of June, 1962.

WHEREFORE, plaintiff demands judgment, jointly and severally, against the defendants, JOAN G. VAN DE MAELE and THOMAS R. O'CONNOR in the amount of One Hundred Fifty-One Thousand One Hundred Sixty Nine and 56/100 (\$151,169.56) Dollars, together with interest on Fifty Nine Thousand (\$59,000.00) Dollars from the 14th day of September, 1962, and interest on Sixty Seven Thousand (\$67,000.00) Dollars from the 8th day of June, 1962, together with costs of this action, and for such other relief as to this Court may seem just.

PHILIP HANDELMAN,
Attorney Pro Se,
Office & P. O. Address,
360 Lexington Avenue,
New York 17, N. Y.

- 54 -

<i>Paid to Cash</i> 11/7/63		June 13, 1962	
\$ 59,000.00		<i>10000</i>	
Three (3) months		<i>after date</i> I <i>promise to pay</i>	
<i>to the order of</i>		<i>--Philip Handelman--</i>	
--Fifty Nine Thousand and no/100--		<i>Dollars</i>	
<i>Payable at</i> Chemical Bank New York Trust Co., 492 Madison Ave., New York, NY			
<i>Value received</i>		<i>Joan G. Van de Maele</i>	
No		Due September 14, 1962	
<i>Signature of Cashier</i>		<i>Joan G. Van de Maele</i>	

EX-100

Paid

\$7,000.00

1961

ST. LOUIS, MO.

to the order of

Official date

premium to pay

Dollars

Payable at

Value received

No.

DATE PAID

JAN 2 1962

JOHN C. HAYES & CO.

JOHN C. HAYES & CO.

EXHIBIT 13

Pay to the order of *after date* *promise to pay*

Payable at *1000 Sixth Avenue, New York City*

Value received

No. *Dtd.* *8 June 1931*

John G. Van der Meule

JOHN G. VAN DER MEULE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Special Term Part 1
Papers Submitted
Sep 1 1965
Numbered 4 J

- 57 -

-----x
PHILIP HANDELMAN,

Plaintiff,

- against -

JOAN G. VAN DE MAELE and THOMAS R.
O'CONNOR,

Defendants.
-----x

ANSWER TO AMENDED
COMPLAINT

INDEX NO. 10499/
1963

The defendants, JOAN G. VAN DE MAELE and THOMAS
R. O'CONNOR, by their attorney, JESSE COHEN, answering the
amended complaint herein;

AS TO THE FIRST CAUSE OF
ACTION AGAINST BOTH DEFENDANTS:

1. Deny knowledge or information sufficient to
form a belief as to the allegations contained in Paragraphs "1"
and "4" of the complaint.
2. Deny so much of Paragraph "3" as alleges that
value was received by the defendants.
3. Deny so much of Paragraph "5" as states that there
is now due and owing to plaintiff from defendants, the sum
of FIFTY NINE THOUSAND AND 00/100 (\$59,000.00) DOLLARS with
interest thereon.

AS TO THE SECOND CAUSE OF
ACTION AGAINST DEFENDANT,
JOAN G. VAN DE MAELE:

4. Answering Paragraph "6" of the complaint,

repeats the answers heretofore made to Paragraph "1" of the complaint with the same force and effect as if fully set forth herein.

5. Denies so much of Paragraph "7" as states that value was received by the defendants.

6. Denies knowledge or information sufficient to form a belief as to the allegation contained in Paragraph "8" of the complaint.

7. Denies so much of Paragraph "9" of the complaint as states that there is now due and owing to plaintiff from defendant, JOAN G. VAN DE MAELE, the sum of SEVENTEEN THOUSAND AND 00/100 (\$17,000.00) DOLLARS with interest thereon.

AS TO THE THIRD CAUSE OF
ACTION AGAINST DEFENDANT,
JOAN G. VAN DE MAELE:

8. Answering Paragraph "10" of the complaint repeats the answer heretofore made to Paragraph "1" of the complaint with the same force and effect as though fully set forth herein.

9. Denies so much of Paragraph "11" of the complaint as states that value was received by the defendant.

10. Denies knowledge or information sufficient to form a belief as to the allegation contained in Paragraph "12" of the complaint.

11. Denies so much of Paragraph "13" of the complaint as states that there is now due and owing to plaintiff from defendant, JOAN G. VAN DE MAELE, the sum of FIFTY THOUSAND AND 00/100 (\$50,000.00) DOLLARS.

AS TO THE SECOND CAUSE OF
ACTION AGAINST DEFENDANT,
THOMAS R. O'CONNOR, AND
THE FOURTH CAUSE OF ACTION
AGAINST DEFENDANT, JOAN G.
VAN DE MAELE:

12. Answering Paragraph "14" of the complaint, repeats the answer heretofore made as to Paragraph "1" of the complaint with the same force and effect as though fully set forth herein.

13. Deny each and every allegation contained in Paragraph "15" of the complaint.

14. Deny so much of Paragraph "16" as states that there is now due and owing to plaintiff the sum of TWENTY FOUR THOUSAND AND 00/100 (\$24,000) DOLLARS from defendant's.

AS TO THE THIRD CAUSE OF
ACTION AGAINST DEFENDANT,
THOMAS R. O'CONNOR, AND
THE FIFTH CAUSE OF ACTION
AGAINST DEFENDANT, JOAN
R. VAN DE MAELE:

15. Answering Paragraph "17" of the complaint, repeat the answer heretofore made as to Paragraph "1" of the complaint with the same force and effect as if fully set forth herein.

16. Deny each and every allegation contained in Paragraphs "18" and "19" of the complaint.

AS TO THE FOURTH CAUSE OF
ACTION AGAINST DEFENDANT,
THOMAS R. O'CONNOR:

17. Answering Paragraph "20" of the complaint, repeats the answer heretofore made as to Paragraph "1" of the complaint with the same force and effect as if fully set forth herein.

18. Admits the allegation contained in Paragraph "21" of the complaint.

19. Denies so much of Paragraph "22" of the complaint as states that the defendant received value.

20. Denies knowledge or information upon which to form a belief as to the allegations contained in Paragraph "23" of the complaint.

21. Denies so much of Paragraph "24" of the complaint as states that there is now due and owing to the plaintiff the sum of SEVENTEEN THOUSAND AND 00/100 (\$17,000) DOLLARS with interest thereon.

AS TO THE FIFTH CAUSE OF
ACTION AGAINST THE DEFENDANT,
THOMAS R. O'CONNOR:

22. Answering Paragraph "25" of the complaint,

repeats the answer heretofore made as to Paragraph "1" of the complaint with the same force and effect as if fully set forth herein.

23. Denies so much of Paragraph "26" of the complaint as states that the defendant received value.

24. Denies sufficient knowledge or information as to the allegations contained in Paragraph "27" of the complaint.

25. Denies so much of Paragraph "28" as states that there is due and owing to the plaintiff the sum of FIFTY THOUSAND AND 00/100 (\$50,000.00) DOLLARS with interest thereon.

AS AND FOR A COMPLETE AFFIRM-
ATIVE DEFENSE TO THE FIRST CAUSE
OF ACTION AGAINST BOTH DEFENDANTS:

26. On or about the 13th day of June, 1962, the plaintiff and the defendant, THOMAS R. O'CONNOR, individually and in a representative capacity, entered into a written agreement, a true copy of which is annexed hereto as Exhibit 1 and made a part hereof.

27. Paragraph "6" of the said agreement provides:

"In the event of the none (sic) payment of said \$59,000.00 note, at its maturity, the escrowee will return the said twenty five (25) shares to the second party."

28. The note referred to in the preceding

paragraph is the note upon which the plaintiff sues in his first cause of action.

29. By virtue of the provisions of Paragraph "6" of the agreement of June 13th, 1962, plaintiff's sole remedy for the non-payment of the note is the return from the escrowee to him, of the shares of stock referred to in the said agreement.

AS AND FOR A SECOND COMPLETE
AFFIRMATIVE DEFENSE TO THE
FIRST CAUSE OF ACTION AGAINST
BOTH DEFENDANTS:

30. Repeats and realleges with equal force and effect as though fully set forth herein, paragraphs numbered "26", "27", and "28".

31. The FIFTY NINE THOUSAND AND 00/100 (\$59,000.00) DOLLARS note upon which the plaintiff seeks to recover in his first cause of action was given to the plaintiff by the defendant, JOAN G. VAN DE MAELE, solely as a means of plaintiff securing payment for the stocks plaintiff had agreed to deliver to the escrowee.

32. The intent of the parties, the plaintiff as well as the defendants, was that the notes as well as the stocks, were to be returned to the respective parties upon default.

AS AND FOR A THIRD COMPLETE
AFFIRMATIVE DEFENSE TO THE
FIRST CAUSE OF ACTION AGAINST
BOTH DEFENDANTS:

33. Repeats and realleges with equal force and effect, as though fully set forth herein, the allegations contained in paragraphs numbered "26", "27", "28", "31", and "32".

34. No written provision was made in the agreement of June 13th, 1962 with respect to the disposition of the note for FIFTY NINE THOUSAND AND 00/100 (\$59,000.00) DOLLARS after a default on that note.

35. That if the agreement is construed to mean that upon default, the plaintiff would receive not only his stock back, but also the note, collection upon such note would represent a penalty and not the actual damages of the plaintiff herein.

36. That as a penalty, the note is not enforceable.

AS AND FOR A COMPLETE AFFIRMATIVE
DEFENSE TO THE SECOND CAUSE OF
ACTION AGAINST THE DEFENDANT,
JOAN G. VAN DE MAELE, THE SECOND
AND THIRD CAUSES OF ACTION AGAINST
JOAN G. VAN DE MAELE AND THE FOURTH
AND FIFTH CAUSES OF ACTION AGAINST
THOMAS E. O'CONNOR:

37. Repeats each and every allegation contained in paragraph "26" hereof with the same force and effect as if fully set forth herein.

38. Paragraph "5" of the said agreement of June 13th, 1962, provides:

"In the event the full amount of said three notes totaling \$115,000 is not paid on June 13th, 1962, the escrowee shall return all papers and documents to Phillip Handelman."

39. The note for SEVENTEEN THOUSAND AND 00/100 (\$17,000.00) DOLLARS, referred to by the plaintiff as the basis for the second cause of action against JOAN G. VAN DE MAELE, and the fourth cause of action against THOMAS R. O'CONNOR, and the note for FIFTY THOUSAND AND 00/100 (\$50,000.00) DOLLARS, which is the basis for the third cause of action against JOAN G. VAN DE MAELE and the fifth cause of action against THOMAS R. O'CONNOR, are in fact two of the three notes referred to in the preceding paragraph.

40. By virtue of the provisions of paragraph "5" of the agreement of June 13th, 1962, plaintiff's sole remedy for the payment of the note is the return from the said escrowee to him of the shares of stock referred to in the said agreement.

AS AND FOR A SECOND COMPLETE
AFFIRMATIVE DEFENSE TO THE
SECOND AND THIRD CAUSES OF
ACTION AGAINST JOAN G. VAN DE
MAELE AND THE FOURTH AND FIFTH
CAUSES OF ACTION AGAINST THOMAS
R. O'CONNOR:

41. Repeats and realleges each and every allegation contained in paragraphs numbered "26", "38" and "39" heretofore with the same force and effect as if set forth fully herein.

42. The notes for SEVENTEEN THOUSAND AND 00/100 (\$17,000.00) DOLLARS and FIFTH THOUSAND AND 00/100 (\$50,000.00) DOLLARS were given to the plaintiff by the defendants solely as a means of plaintiff securing payment for the stocks that plaintiff had agreed to deliver to the escrowee.

43. It was the intent of the parties that the notes were to be returned upon default.

AS AND FOR A THIRD COMPLETE
AFFIRMATIVE DEFENSE TO THE
SECOND AND THIRD CAUSES OF
ACTION AGAINST JOAN G. VAN
DE MAELE AND THE FOURTH AND
FIFTH CAUSES OF ACTION AGAINST
THOMAS R. O'CONNOR:

44. Repeats and realleges each and every allegation contained in paragraphs numbered "26", "38", "39", "42" and "43" hereof with the same force and effect as if fully set forth herein.

45. That if the agreement is construed so that in addition to the return of the stock to the plaintiff herein, the notes for SEVENTEEN THOUSAND AND 00/100 (\$17,000.00) DOLLARS and FIFTY THOUSAND AND 00/100 (\$50,000.00) DOLLARS would be also given to him; the payment of such notes would then constitute a penalty and not the actual damages of the plaintiff herein.

46. That as a penalty, the notes for SEVENTEEN THOUSAND AND 00/100 (\$17,000.00) DOLLARS and FIFTY THOUSAND AND

00/100 (\$50,000.00) DOLLARS, respectively, are unenforceable.

AS AND FOR A COMPLETE AFFIRMATIVE
DEFENSE TO THE SECOND CAUSE OF
ACTION AGAINST THE DEFENDANT,
THOMAS R. O'CONNOR, AND THE
FOURTH CAUSE OF ACTION AGAINST
THE DEFENDANT, JOAN G. VAN DE
MAELE:

47. On or about the 1st day of March, 1968, the parties entered into an agreement for purchase and sale of eighty-eight (88) shares of the outstanding stock of a corporation GRAPHIC ARTS EXHIBIT BUILDING, INC., for a total purchase price to be paid by the defendants to the plaintiff, of TWENTY FOUR THOUSAND AND 00/100 (\$24,000.00) DOLLARS more than the purchase price for such of the eighty-eight (88) shares owned by plaintiff as set forth in the agreement of June 13th, 1962 between plaintiff and defendant, THOMAS R. O'CONNOR, individually and in a representative capacity.

48. Said agreement provided that in the event the defendant, THOMAS R. O'CONNOR, individually and in a representative capacity, did not pay the consideration for the stock within a specific time, plaintiff's obligation to deliver the stock would terminate and neither party would have any liability or obligation to any other party.

49. Defendant, THOMAS R. O'CONNOR, individually and in a representative capacity, did not pay the consideration

within the specified time and defendants have no obligation or liability to the plaintiff.

AS AND FOR A SECOND COMPLETE
AFFIRMATIVE DEFENSE TO THE
SECOND CAUSE OF ACTION
AGAINST THE DEFENDANT, THOMAS
R. O'CONNOR AND THE FOURTH
CAUSE OF ACTION AGAINST THE
DEFENDANT, JOAN G. VAN DE KAELE:

50. On or about the 1st day of March, 1963, plaintiff exacted from the defendant, an agreement to pay a greater sum than at the rate of SIX AND 00/100 (\$6.00) DOLLARS upon ONE HUNDRED AND 00/100 (\$100.00) DOLLARS for one year, to wit, TWENTY FOUR THOUSAND AND 00/100 (\$24,000.00) DOLLARS, for granting to the defendant an extension of time upon which to pay the notes annexed to the complaint as Exhibits A, B, and C; that the agreement requiring an increment of TWENTY FOUR THOUSAND AND 00/100 (\$24,000.00) DOLLARS upon which to pay the notes stated in the agreement of June 13th, 1960, is a corrupt and usurious agreement between the parties, and that such agreement contemplates a usurious rate of interest to be paid and received for the extension of time to pay the aforementioned notes.

WHEREFORE, defendants demand judgment dismissing the complaint and the costs of this action.

JESSE COHEN
Attorney for Defendants
295 Madison Avenue
New York, New York

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

JESSE COHEN, being duly sworn, deposes and says:

That he is the attorney for the defendants herein and has his office at 295 Madison Avenue, in the City of New York, County of New York, New York; That he has read the foregoing Answer to the Amended Complaint, and knows the contents thereof and that the same is true of his own knowledge except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the reason why this varification is made by deponent instead of by the defendants is because the defendants are not within the County of New York, which is the county where deponent has his office.

Deponent further says that the grounds of his belief as to all matters in the said answer not stated upon his knowledge are as follows: Statements of said defendants and correspondence between said plaintiff and defendants, his general investigation of the facts of this case, and a survey of the premises in question.

JESSE COHEN (S)
Jesse Cohen

Sworn to before me this
10th day of May, 1965

IT IS HEREBY AGREED by and between THOMAS R. O'CONNOR the First Party, and PHILIP HANDELMAN, for himself and others, as the Second Party, as follows:

1) PHILIP HANDELMAN represents that GRAPHIC ARTS EXHIBIT BUILDING INCORPORATED (hereinafter called "GRAPHIC ARTS") is a duly organized and validly existent corporation under the laws of the State of New York, and further makes those representations set forth on Exhibit "A" annexed hereto.

2) The First Party for himself and in representative capacity, is indebted to the Second Party in the sum of ONE HUNDRED SEVENTH FOUR THOUSAND (\$174,000) DOLLARS, represented by four (4) non-interest bearing promissory notes in the following sums: FIFTY THOUSAND (\$50,000) DOLLARS; SEVENTEEN THOUSAND (\$17,000) DOLLARS; FORTY EIGHT THOUSAND (\$48,000) DOLLARS and FIFTY NOTE THOUSAND (\$59,000) DOLLARS, the first three of the above cited notes being presently in default, and aggregating ONE HUNDRED FIFTEEN THOUSAND (\$115,000) DOLLARS.

3) The Second Party will deposit with AUSTIN CREY of CHEMICAL BANK NEW YORK TRUST COMPANY, as escrowee, eighty-eight (88) shares of the capital stock of GRAPHIC ARTS, duly endorsed in blank which shares shall be released by said escrowee in accordance with the terms of Paragraphs "4" and "5" hereof.

[- 1 -]

[Exhibit 1 (Answer to Amended Complaint, p. 5)]

4) In the event that said three notes in the total amount of ONE HUNDRED FIFTEEN THOUSAND (\$115,000) DOLLARS are paid on or before June 15, 1962, and AUSTIN GREY will deliver sixty-three (63) shares of said eighty-eight (88) shares to THOMAS R. O'CONNOR, or his designee, and will continue to hold in escrow twenty-five (25) shares pending the payment of the note dated June 13, 1962 payable September 14, 1962 in the sum of FIFTY NINE THOUSAND (\$59,000) DOLLARS. All voting rights with respect to said twenty-five (25) shares shall be exercisable until an event of default shall have occurred under the aforementioned note, by the Second Party, and the First Party shall deliver to the escrow agent an irrevocable proxy covering the period from the date of payment of the three (3) notes referred to in Paragraph "4" hereof to the earlier of September 14, 1962, or the payment of the FIFTY NINE THOUSAND (\$59,000) DOLLAR note referred to above.

5) In the event that the full amount of said three notes totalling ONE HUNDRED FIFTEEN THOUSAND (\$115,000) DOLLARS is not paid on June 15, 1962, the escrowee shall return all papers and documents to PHILIP HANDELMAN.

6) In the event of non-payment of said FIFTY NINE THOUSAND (\$59,000) DOLLAR note, at its maturity, the escrowee will return and said twenty-five (25) shares to the Second Party.

Dated: New York, New York
June 13, 1962

/s/ Thomas R. O'Connor
Thomas R. O'Connor, First Party

/s/ Philip Handelman
Philip Handelman, Second Party

PHILIP HANDELMAN, represents and THOMAS R. O'CONNOR hereby acknowledges the existence and validity of the following obligations of GRAPHIC ARTS EXHIBIT BUILDING INCORPORATED (hereinafter called "GRAPHIC ARTS"):

- 1) Agreement between GRAPHIC ARTS and THOMAS R. O'CONNOR dated June 28, 1961;
- 2) Agreement between GRAPHIC ARTS and RAYMOND BARGER dated January 23, 1961;
- 3) Employment Agreement between GRAPHIC ARTS and PHILIP HANDELMAN dated January 23, 1961;
- 4) Retainer Agreement between GRAPHIC ARTS and PHILIP HANDELMAN dated January 23, 1961, for legal services.
- 5) Agreement of Lease between GRAPHIC ARTS and NEW YORK WORLD'S FAIR 1964/1965 CORPORATION dated December 29, 1961;
- 6) Agreement of Lease between GRAPHIC ARTS and NEW YORK WORLD'S FAIR 1964/1965 CORPORATION dated January 16, 1962;
- 7) Agreement between GRAPHIC ARTS and SCHOFIELD & WEED dated January 18, 1962;
- 8) Agreement between GRAPHIC ARTS and RAYMOND BARGER dated February 12, 1962;

[- 1 -]

EXHIBIT "A".

9) Agreement between GRAPHIC ARTS and PAUL VERHELST dated February 28, 1962;

10) Four (4) outstanding promissory notes by GRAPHIC ARTS to: A. ALFRED SOLOMON; HENRY BEY; RICHARD BEY and EDMUND BEY, each in the sum of \$2,500 totalling \$10,000.

11) Bill for printing to BENJ. TYRRELL, INC. in the sum of \$632.94.

12) Agreement between GRAPHIC ARTS and JAMES TALCOTT, INC. dated December 28, 1961;

13) Graphic Arts is obligated to BENNETT CERF and/or RANDOM HOUSE, INC. for the use of 450 square feet in GRAPHIC ARTS PAVILION without charge, for the duration of the New York World's Fair.

14) Note dated December 28, 1961 for \$100,000 payable
PH/TRO to James Talcott, Inc.

ACKNOWLEDGED AND AGREED

/s/ Thomas R. O'Connor

PHILIP HANDELMAN, further warrants and represents:

(a) All of the issued and outstanding capital stock of GRAPHIC ARTS are fully paid and non-assessible and represent Two Hundred (200) shares out of its total authorized capital stock of Two Hundred (200) shares and that there are no outstanding agreements or commitments for issuance of additional shares.

(b) That the foregoing list of contracts represents all of the outstanding obligations of GRAPHIC ARTS as of the date hereof.

(c) That the Party of the Second Part has full right and authority to transfer the shares of stock to be transferred hereunder individually and for those whom he represents, and that (i) such shares are free and clear of all liens and encumbrances of whatever nature and (ii) the transfer of these shares will not result in a breach of any agreement to which GRAPHIC ARTS is a party, nor will create any liens or encumbrances upon any of the foregoing Agreements.

(d) The resignations of officers and directors of GRAPHIC ARTS will be delivered to the escrowee upon the payment of the notes aggregating \$115,000.

Dated: New York, New York
June 13, 1962

/s/ Philip Handelman
Philip Handelman

ADDENDUM TO ESCROW INSTRUCTIONS

Payment of the three notes aggregating \$115,000 referred to in the Escrow Agreement shall be made by the delivery of bank cashier's or certified check or checks, made payable to the order, as indicated below, to AUSTIN GREY at Chemical Bank New York Trust Company, 52nd Street & Madison Avenue, New York, New York, the escrow agent named herein, prior to the close of business on June 15, 1952:

\$50,000 made payable to order of PHILIP HANDELMAN

\$17,000 made payable to order of PHILIP HANDELMAN

PH/TRO \$148,000 made payable to order of A. ALFRED SOLOMON

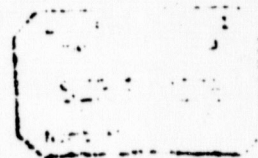
Said sum shall be delivered by the escrow agent to MR. HANDELMAN upon the receipt by him of the said three (3) notes aggregating \$115,000 described in Paragraph "2" of the escrow instructions, marked "Paid in Full", which notes shall thereupon be delivered to THOMAS R. O'CONNOR.

The responsibility of THOMAS R. O'CONNOR under the escrow agreement shall be met and compliance with its terms shall be fulfilled upon the receipt by MR. GREY of the \$115,000 as referred to above and upon the receipt by Mr. GREY of a certified in the amount of \$59,000 or bank cashier check / made payable to PHILIP HANDELMAN, on PH/TRO or before the close of business on September 14, 1962. Said check shall likewise be delivered against the receipt by Mr. GREY of the note representing said \$59,000 marked "Paid in Full", which note shall thereafter be delivered to Mr. O'CONNOR.

Dated: New York, New York
June 13, 1962

/s/ Thomas R. O'Connor
Thomas R. O'Connor

/s/ Philip Handelman
Philip Handelman



CERTIFICATE OF PROTEST

WILSON, WALTER D. 1900-1901. U. S.

2. New York, N.Y.

United States of America—State of New York—County of _____ ss:

BE IT KNOWN, that I, a duly empowered Notary Public at the request of the Meadow Brook

National Bank, did duly present

CO 100-8191 the annexed 7-11

for \$ 17.00 dated December 3, 1961

Signed by John H. Vande Molen

at The Meadow Brook National Bank, Rockledge Center Office

Alfred V. Smith N. Y., the time limit having elapsed and demanded payment thereof.

which was refused; whereupon I solemnly PROTESTED, and by these presents do publicly and solemnly protest the said instrument as against all parties whom it may concern, for exchange, re-exchange, and all costs, damages and interest already incurred, or hereafter incurred, by reason of the non-payment thereof; and I hereby certify that on the same day, I gave due notice to the makers and endorsers thereof by depositing in the Post Office

NAME		DIRECTED TO
One for	<u>Philip Handelman</u>	
One for	<u>Nancy Arnold</u>	
One for	<u>Glenn Earl Smith 114 Trenton St. New York</u>	
One for		
One for		
One for		

Each notice being directed to the reputed place of residence of the person for whom it was intended.

* Reason for protest General Agent - 100000

IN WITNESS WHEREOF, I have hereto set my hand and affixed my
Seal of Office)

How M. Warren Notary Public

ALCANTARA

CONCLUSIONS

230558

NOTICES

POSTAGE

TOTAL

RECEIVED
Military Police School
No. 10000000
Quoted in: [illegible]
Commission Expires: [illegible]

CERTIFICATE OF PROTEST

SHAW-WALKER & COMPANY, INC., N.Y.

N.Y.

United States of America—State of New York—County of Westchester

BE IT KNOWN, that I, a duly empowered Notary Public at the request of the Meadow Brook National Bank, did duly present

on June 8, 1961 the annexed Note

for \$ 50,000.00 dated December 8, 1951

Signed by John G. Van der Made

at The Meadow Brook National Bank, Putnam Station Center Office, New York N. Y., the time limit having elapsed and demanded payment thereof, which was refused; whereupon I solemnly PROTESTED, and by these presents do publicly and solemnly protest the said instrument as to all parties whom it may concern, for exchange, re-exchange, and all costs, damages and interest already incurred, or hereafter incurred, by reason of the non-payment thereof; and I hereby certify that on the same day, I gave due notice to the makers and endorser thereof by depositing in the Post Office at New York N. Y. (postage prepaid) notices thereof directed to the parties to be charged as follows:

NAME	DIRECTED TO
One for <u>Richard H. Hirschman</u>	_____
One for <u>Edward A. Hirschman</u>	_____
One for <u>Chemical Bank N.Y. Trust Co.</u>	_____
One for _____	_____
One for _____	_____
One for _____	_____

Each notice being directed to the reputed place of residence of the person for whom it was intended.

Reason for protest Non-payment of Note

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Seal of Office

Ernest W. Winters Notary Public

AMOUNT	50,000.00
INTEREST	
PROTEST	1.50
NOTICES	
POSTAGE	
TOTAL	50,001.50

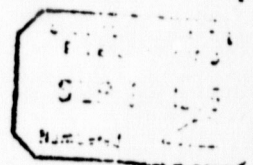
NOTARY PUBLIC
Notary Public, State of New York
Qualified to perform all notary duties
Commission Expires 12/31/62

LAW OFFICE OF
PHILIP MANDELMAN
185 N. W. 10th St.
NEW YORK, N. Y.

PHILIP MANDELMAN
WARD, LUTZ & CO.
JOHN J. COUGHLIN
DAVID M. MORGENTHAU

MURRAY
CHILE
"LEXINGTON"

July 9, 1962

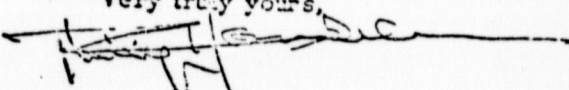


Mr. Thomas R. O'Connor
4 West 50th Street
New York, New York

Dear Tom:

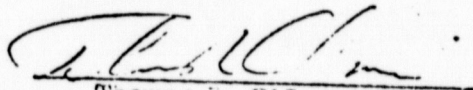
This will confirm our oral understanding this date
that the closing date of June 15, 1962 provided in our
Agreement dated June 13, 1962, is hereby extended
to Wednesday, July 11, 1962.

Very truly yours,


PHILIP MANDELMAN

PH:bg

ACCEPTED:


Thomas R. O'Connor

The undersigned, Escrowee, acknowledges receipt from PHILIP HANDELMAN of Certificate # 16 representing 30 shares, Certificate #17 representing 25 shares, and Certificate #18 representing 40 shares of stock of GRAPHIC ARTS EXHIBIT BUILDING INCORPORATED duly endorsed in blank.

The undersigned agrees to hold said shares of stock in escrow pending notification by bank wire through REPUBLIC NATIONAL BANK by THE EXCHANGE BANK & TRUST COMPANY OF DALLAS, TEXAS that a loan agreement in principal sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS between THE EXCHANGE BANK & TRUST COMPANY and GRAPHIC ARTS EXHIBIT BUILDING INCORPORATED has been culminated. Upon such notification, the escrowee agrees to deliver to PHILIP HANDELMAN a check to the order of PHILIP HANDELMAN in the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000.00) DOLLARS and a check to the order of RAYMOND BARGER in the sum of TEN THOUSAND (\$10,000.00) DOLLARS and to forward the aforementioned shares to THE EXCHANGE BANK & TRUST COMPANY or its designee.

In the event that the aforementioned loan agreement is not culminated on or before March 15, 1963 at 3 P.M., said certificates will be returned to PHILIP HANDELMAN.

DATED: NEW YORK, NEW YORK
March 14, 1963

BANKERS TRUST COMPANY

R. J. L. [Signature]
Asst. Sec'y

The undersigned, as escrowee, acknowledges receipt from PHILIP HANDELMAN of Certificate #16 representing thirty-nine (39) shares, Certificate #17 representing twenty-five (25) shares and Certificate #18 representing forty (40) shares of stock of GRAPHIC ARTS EXHIBIT BUILDING INCORPORATED, duly endorsed in blank.

The undersigned agrees to hold said shares of stock in escrow pending notification by bank wire through REPUBLIC NATIONAL BANK by THE EXCHANGE BANK & TRUST COMPANY of Dallas, Texas that a loan agreement in principal sum of FIVE HUNDRED THOUSAND (\$500,000) DOLLARS between THE EXCHANGE BANK & TRUST COMPANY and GRAPHIC ARTS EXHIBIT BUILDING INCORPORATED has been culminated. Upon such notification, the escrowee agrees to deliver to PHILIP HANDELMAN a bank check to the order of PHILIP HANDELMAN in the sum of ONE HUNDRED FIFTY THOUSAND (\$150,000) DOLLARS and a bank check to the order of RAYMOND BARGER in the sum of TEN THOUSAND (\$10,000) DOLLARS and to forward the aforementioned shares to THE EXCHANGE BANK & TRUST COMPANY, or its designee.

In the event that the aforementioned loan agreement is not culminated on or before March 25, 1963 at 3:00 P.M., said certificates will be returned to PHILIP HANDELMAN.

Dated: New York, New York
March 20, 1963

BANKERS TRUST COMPANY

By

R. J. [Signature]
Asst. Secy

[Cover page and affidavit of service omitted.]

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PHILIP HANDELMAN,

Plaintiff,

-against-

JOAN G. VAN DE MAELE and
THOMAS R. O'CONNOR,

Defendants.

AFFIRMATION

Index No. 10409/1963

U. S. TAX COURT

Produced Pursuant to Court Order
Admitted in Evidence

JAN 25 1972

Petitioner's Exhibit
Respondent's Exhibit

-----X
PHILIP HANDELMAN, an attorney and the plaintiff herein, hereby affirms the following under the penalties of perjury:

I make this affirmation in reply to the affidavits submitted by the defendants in opposition to the within motion for summary judgment in the amount of \$150,000.

The defendants' affidavits represent an abortive attempt to create the illusion that there are disputes with regard to facts which are relevant to this motion, and to create an aura of suspicion around the transactions which gave rise to this law suit. This is a familiar tactic to the defendants who, to date, have used it unsuccessfully in that there are presently pending against both defendants judgments approximating \$500,000. In addition to Judge Breitell's description of the factual matter presented by the defendants in opposition to the application for summary judgment against them in the Solomon action, as "commercially incredible", the Appellate Division has stricken similar sham defenses set up by the defendants in cases where the defendants attempted to avoid liability on unconditional notes by alleging the defenses of conditional delivery, lack of consideration and fraud. The Appellate Division in Ram Industries v. Van De-Maele, 20 App. Div. 2d 783; 248 N. Y. S. 2d 176, stated:

"It clearly appears *** from all the affidavits submitted on the motion and on the renewal of the motion that there is no merit to defendant's denials and her alleged defenses of conditional delivery and lack of consideration. The defendant's affidavits are principally argumentative in nature and, so far as the facts are concerned, are mainly directed to showing a dispute in non-vital matters *** (I)ts (the plaintiff's) rights are not to be defeated by allegations of (defendant) designed to create an aura of suspicion."

While Mr. O'Connor alleges in conclusory fashion, that the instant situation is "somewhat different from the Solomon case", neither he nor Van De Maele denies that the Solomon note, on the basis of which summary judgment was obtained, is also the subject matter of documents annexed to the moving papers herein, to wit, the escrow agreement dated June 13, 1962 (annexed to Exhibit 2), the letter agreement dated July 6, 1962, and that escrow agreements similar to those annexed to the moving papers as Exhibits 6 and 7 were entered into on behalf of Dr. Solomon. That the same documents which prompted the Court in the Solomon case to award summary judgment are involved herein is clearly seen from an examination of the record on appeal in this case. So as to clarify that the same factual matters, legal issues and documents were involved in that case as are relevant herein, a copy of the record on appeal and briefs submitted to the Appellate Division in that case will be handed up to this Court, and will be marked "Exhibit 8" to this affirmation. Specific reference in that record on appeal is made to Exhibit II (the answer), Exhibit I to the answer (the escrow agreement which is set out in that record at pages 23 through 28), Exhibit V, Exhibit VIII and Exhibit X. Further reference should be made to the defendant's affidavit, which is set forth in that record at pages 36 through 44, in which he attempts to raise the same "non-vital issues" with regard to this agreement with Graphic Arts, which he there annexed as Exhibit A to his affidavit, the alleged complaints about the failure to tender or deliver stock,

purported agreement that the defendants would not be liable on their notes in the event that they did not pay them, the alleged defense of usury and the allegation that I was acting as attorney for him in the negotiation of the purchase of Dr. Solomon's stock. As previously indicated, the Appellate Division was not distracted from the fact that there was no dispute with regard to the relevant facts in that plaintiff's right to judgment for the amount of the note was well documented. Indeed, that Court mentioned as "a striking circumstance" that

"there are no writings which confirm defendants' contentions although so many phases of the transactions between plaintiff and defendants were reduced to writing or resulted in corroborative letters."

In the Solomon case the defendants attempted to raise the same vague inferences of impropriety on my part by annexing to their papers in opposition in that action a copy of my complaint against them in this action. That tactic had the unintended effect of promoting the Appellate Division to note:

"During this period defendant O'Connor was heavily involved in the operation of the corporation, serving as its president. This ensued as part of the transactions which gave rise to several sales of stock, including the one in suit. As in this case, there have been defaults on the other purchases in which one or the other or both of defendants were parties."

Aside from the vague inferences of impropriety and the allegations of matters that are completely unrelated to any of the defenses in opposition reveals that there is no dispute with regard to the basic facts which entitles the plaintiff herein to summary judgment. These facts are: (a) that the defendants agreed to purchase stock owned by the plaintiff; (b) that the defendants issued the notes in suits in

payment for that stock; (c) that the plaintiff, on numerous occasions, tendered the stock by placing it in escrow with various bank officers and directing the escrow agent to deliver the stock upon payment of the notes, and (d) that the defendants have failed to pay in accordance with their agreement and notes.

It is significant to note that the lengthy affidavit submitted on behalf of the defendants is made by Mrs. Van De Maele who was the "silent" partner in the deal. My negotiations were with Mr. O'Connor. It may be that Mr. O'Connor was unavailable for lengthy consultation, having been incarcerated for contempt of court in connection with a money judgment pending against him.

The picture that Mrs. Van De Maele attempts to create in her affidavit is of an unknowing and unsophisticated woman who was dominated by me to the extent that all I had to do was ask her to give me large sums of money and promissory notes and she naively complied. The records of this Court, however, speak eloquently of the numerous commercial machinations in which she has been involved both with and without Mr. O'Connor. Indeed, she has been put into receivership and for the last few years numerous banks, other lending institutions and individuals have been attempting to collect judgments against her which total approximately \$500,000. See, e.g. Bank of Nova Scotia vs. Joan G. Van De Maele, and Bankers Trust Company, index #5940/1963, in which the numerous judgment-creditors are listed as intervenors, and Chemical Bank New York Trust Company, Judgment Center, vs. Joan G. Van De Maele, Judgment Debtor, and Bankers Trust Company, Respondent, index #5030/1963. Those suits involved an attempt on the part of various judgment-creditors to obtain the income from a spendthrift trust set up by Mrs. Van De Maele's father, Harry F. Guggenheim.

While Mrs. Van Maele, in her affidavit, purports to set forth exact conversations between herself and me, her extensive examination before trial reveals that she purported to know very little about the transactions other than that which Mr. O'Connor told her. For instance, the following testimony was taken at page 37 of her examination:

"Q. Did you know how much money you, or Mr. O'Connor on your behalf, had agreed to pay for Mr. Handelman's stock, individually?

A. I didn't; no."

In her affidavit Mrs. Van De Maele sets forth, in quotes, various alleged conversations between her and myself in connection with the escrow agreement of June 13, 1962, in which she and Mr. O'Connor, in that written document, admit their liability on the three outstanding notes which are the subject matter of this suit. In her examination, however, at page 84, the following appears:

"Q. Were you present during the time that this agreement, Plaintiff's Exhibit 9, was negotiated?

A. I do not believe so."

Indeed, most of the matters that Mrs. Van De Maele sets forth in her affidavit are contradicted by her prior examination, her pleadings and the written documents which constitute the basis for plaintiff's motion herein. While those matters are completely irrelevant to plaintiff's cause of action because of the operation of the parol evidence rule, which precludes the admission of the alleged oral conversations set forth in Mrs. Van De Maele's affidavit (see Judge Breitell's decision), this Court's attention is directed to some of those glaring inconsistencies. For instance, she blithely states that I told her that the \$59,000 note that she was giving me "really didn't mean anything", and, in effect, that I never intended to collect upon it. However, in her examination, at page 45, the following appears:

"Q. Mrs. Van De Maele, I show you Exhibits 3, 4 and 5 (handing documents to witness). Were those notes (the three notes in suit) in payment for stock of Graphic Arts Exhibit Building, Inc. ?

A. Yes."

....

Q. Is that a portion of the purchase price that you had agreed to pay, or is that the total of the purchase price that you had agreed to pay?

A. This is a portion."

And on page 114 of that examination, which was held on October 23, 1963, the following appears:

"Q. On June 13, 1962, was it your understanding that you had a legal obligation to pay Plaintiff's Exhibit No. 6 for Identification (the \$39,000 note)?

MR. ELLIS: Just a moment. Repeat it, please. (The pending question was read by the reporter.)

MR. ELLIS: You can answer the question

A. Yes.

In any event, of course, the Appellate Division, in the Solomon case, has ruled that the defendants' alleged defenses of oral agreements which supposedly relieve them of any liability on the unconditional promissory notes are insufficient in law. Consequently, the bulk of Mrs. Van De Maele's affidavit, in which she attempts to relieve herself of her obligations on the notes by setting forth newly remembered conversations, four years after the event, is completely irrelevant to this motion.

Mr. O'Connor, in his affidavit, also ignores the effect of the Appellate Division's ruling with regard to the insufficiency of the alleged defense of an oral agreement which purports to relieve the de-

defendants of liability on their unconditional notes. He simply states:

"If we did not raise the money we would not be liable - the deal would be off."

That is the exact alleged defense which the Appellate Division held was legally insufficient, as well as being "commercially incredible."

The defendants claim that the law announced in the Solomon case is inapplicable to the instant situation because in that case the plaintiff was a doctor and in this case the plaintiff is a lawyer. Of course, if everything that Mrs. Van De Maele states is true, both she and Mr. O'Connor have some sort of a cause of action against Dr. Solomon, the corporation and me for mismanagement of her and the corporation's affairs. However, in view of the legal principles set forth by the Appellate Division in the Solomon case, and, in the context of the defenses raised by the defendants in their answer herein (which defenses are summarized in the moving papers) all of those matters set forth in the opposing affidavits are irrelevant to this motion and raise no questions of fact which require a trial.

That the defendants did not think of me as having represented them in connection with the sale of my stock in Graphic Arts to them is apparent from the fact that, during my negotiations with them, they were represented by William Hamilton, Esq., (a copy of his letter to me is annexed hereto as Exhibit 9) and the firm of Olwine, Connelly, Chase, O'Donnell & Weyher, which firm, along with me, drafted the basic agreement dated June 13, 1962 (which is annexed to the defendants' answer, Exhibit 2 herein). The following appears at page 82 of Mrs. Van De Maele's examination:

"Q. Do you know who Paul Chase is?

A. Yes.

Q. Who is Paul Chase?

A. He is an attorney.

Q. Do you know whether he is associated with the firm of Olwine, Connelly, Chase, O'Donnell & Weyher?

A. Yes.

Q. Were you represented by that firm?

A. When?

Q. On or about June 13, 1962?

A. Yes.

....

Q. In connection with what transaction did he represent you?

A. The purchase of Graphic Arts stock."

Mrs. Van De Maele denies, in her affidavit, that she personally agreed to pay an additional \$24,000 for the stock. However, in Paragraph 47 of her answer she alleges an agreement to pay that additional amount. As stated by Judge Breitel in the Solomon decision, in connection with a similar admission in the pleading, "this is a fatal confession." In addition, of course, there stands the unexplained documentation of that agreement which is contained in the escrow agreements, Exhibits 6 and 7 to the moving affidavit, in which it is stated that the stock will be delivered to the defendants upon their payment of \$150,000, which sum is the amount sued for herein. In addition, the following appears in Mr. O'Connor's deposition at page 102:

"A. There were at least two or three occasions at which the price was raised, and I don't recall the additional amounts. They were completely different each time.

Q. Do you remember the amount that it was raised to the last time?

....

A. Well, it was raised an additional \$24,000 the last time.

....

Q. What was the date of the \$24,000 raise?

A. I think it was the first quarter of 1963.

Q. Are you referring now to the \$24,000 amount indicated in Paragraph 24 of your answer?

A. Yes.

Mr. O'Connor in his affidavit belatedly asserts in a conclusory fashion, that he is not liable on the two notes which were not signed by him (He is a co-signer only on the \$50,000 note.) However, in his pleadings at paragraphs 18, 19 and 23 of his answer, the defendant does not deny and consequently admits the allegations contained in paragraph 22 and 26 of the amended complaint (Exhibit 1 herein). In those paragraphs the plaintiff expressly alleges that Mrs. Van De Vaele signed the \$17,000 and \$15,000 notes on behalf of herself and Mr. O'Connor, who were engaged in a partnership or co-venture for the purpose of purchasing stock in Graphic Arts.

In addition to this admission in the pleadings, Mr. O'Connor expressly sets forth in the agreement of June 13, 1962, at paragraph 2 thereof, that he "for himself and in representative capacity, is indebted to (the plaintiff)" in the amount of the three notes herein suit. The fourth note referred to in paragraph 2 of that agreement is the note upon which Dr. Solomon has obtained judgment. Consequently Mr. O'Connor's conclusory denial is nullified by his own pleadings and the documented evidence submitted herein. Judging from the opposing affidavit the defendants have abandoned their defense of usury with regard to their agreement to pay an additional \$24,000 for the stock, and in the light of the law announced by the Appellate Division in the Solomon case the defendants had no alternative.

The wisdom of the parol evidence rule as applied in the Solomon case, and as it is applicable to the case at bar, is particularly evident in the light of the opposing affidavits which go all over the lot in an attempt to create a smoke screen around the unconditional promissory notes and the record documents which memorialize the transaction between the parties. It should be clear from the above however, that upon analysis, that smoke screen dissipates and the bare facts which entitle the plaintiff to the relief sought herein glare through.

The defendants agreed to purchase the plaintiff's stock and issued notes in payment therefor. The plaintiff tendered the stock on numerous occasions by placing it in escrow with various bank officers, directing the escrow agent to deliver the stock upon the payment of the notes. The defendants have failed to pay in accordance with their notes and their agreement, and the plaintiff seeks to hold them to their bargain. The affirmative defenses raised by the defendants in an attempt to avoid their clear liability are either insufficient in law, or they have failed to present evidentiary evidence of such defenses.

(a) With regard to the alleged defense of lack of consideration, that is insufficient since the plaintiff's agreement to deliver the stock upon the payment of the notes is legal and sufficient consideration for those notes.

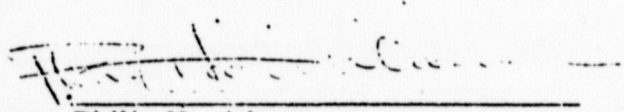
(b) There is no "penalty" involved. The plaintiff merely is seeking to hold the defendants to their agreement to purchase his stock.

(c) The alleged agreements which the defendants claim relieved them of liability on their promissory notes are inadmissible by virtue of the parol evidence rule.

(d) The defendants have abandoned their defense of usury with respect to the \$24,000 amount, which defense the Appellate Division has held to be inapplicable to this situation.

WHEREFORE, your deponent respectfully requests that the plaintiff's application for summary judgment be, in all respects, granted and that the plaintiff be awarded judgment against both defendants in the amount of \$150,000.00 with interest from the due date of the respective notes and with interest on \$24,000.00 from March 1, 1963.

Dated: New York, New York
August 17, 1965

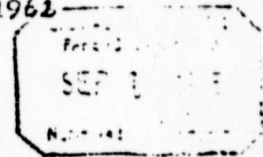

Philip Handelman

WILLIAM F. HAMILTON
ATTORNEY AT LAW
743 FIFTH AVENUE
NEW YORK 22, N. Y.
MURRAY HILL 3-3337
PLAZA 8-7751

SPECIAL DELIVERY

October 2, 1962

Philip Handelman, Esq.
360 Lexington Ave.
New York 17, N.Y.



Dear Phil:

Forwarded enclosed herewith please find note of Thomas R. O'Connor and Jean Van de Maele, payable November 15, 1962, to the order of A. Alfred Solomon in the sum of \$58,000.00. It is understood, in accordance with our telephone conversation, that you are going to hold this note in escrow until you return to me, or to the makers, the previous note payable to Mr. Solomon in the face amount of \$48,000.00, and that you will not deliver the enclosed note to Mr. Solomon until said previous note is returned.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. F. Hamilton".

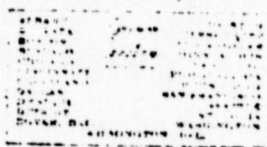
William F. Hamilton

WFH:IH
Encl.

c.c. Mr. Thomas R. O'Connor

THE CORPORATION TRUST COMPANY

INCORPORATED IN THE STATE OF NEW YORK
THE CORPORATION TRUST COMPANY IS A MEMBER OF THE FEDERATION OF FINANCIAL INSTITUTIONS



(DUPLICATE 4-11-64)

120 BROADWAY
NEW YORK

APRIL 5, 1964

PHILIP MANDELMAN
360 LEXINGTON AVENUE
NEW YORK, NEW YORK

U. S. TAX COURT	
Admitted for Distribution	
Admitted in Evidence	
JAN 25 1972	
Petitioner's Exhibit	12
Respondent's Exhibit	
Docket No.	

GRAPHIC ARTS EXHIBIT BUILDING INCORPORATED DELAWARE

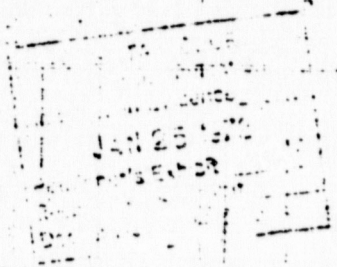
DATE	DESCRIPTION	DEBIT	CREDIT	LAST AMOUNT IN THIS COLUMN IS BALANCE UNPAID
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 4/30 [unclear] on [unclear] [unclear]



1-2-70

6/18 Mr. & Mrs. Day to Newport to watch St. & of course
for Mr. Johnson & Angeline to go to Providence by ship
on boat -

7/13 Mr. & Mrs. & family on boat

7/20 Mr. & Mrs. to boat for dinner

7/27 Big Miller to boat for week end

8/3 Ketter to boat for week end

9/17 Clarence Melroy in Newport on boat

(see schedule of races for other guests)

John D. ...

6/4 J. D. ... & his ... to boat for ...

6/12 A. C. ... & ... from ... to boat for ...

6/21 Mr. & Mrs. ... to boat for ...

6/27 Mr. ... & Mr. ... to boat

7/3 ... on boat

7/19 ... on boat for ...

7/21 ... his ... to boat

8/1 ... & ... to boat

8/2 ... to boat for ...

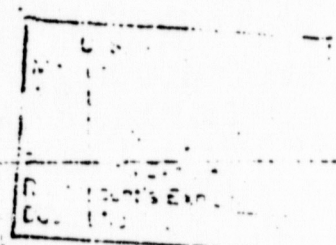
8/11 Mr. & Mrs. ... on boat for ...

8/18 Mr. ... to boat

8/23 ... & ... to boat for ...

8/27 Mr. & Mrs. ... to boat for ...

9/1 ... on boat



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11-10-1908

[illegible]

- 00T -

PERSONAL
LIABILITIES, 1944

1932 1933 1934 1935 1936 1937 1938 1939 1940 1941 1942

1. DR. S. S. S. (DR. S. S. S.)

2. DR. C. C. C. (DR. C. C. C.)

3. DR. D. D. D. (DR. D. D. D.)

4. DR. E. E. E. (DR. E. E. E.)

5. DR. F. F. F. (DR. F. F. F.)

6. DR. G. G. G. (DR. G. G. G.)

7. DR. H. H. H. (DR. H. H. H.)

8. DR. I. I. I. (DR. I. I. I.)

9. DR. J. J. J. (DR. J. J. J.)

10. DR. K. K. K. (DR. K. K. K.)

11. DR. L. L. L. (DR. L. L. L.)

12. DR. M. M. M. (DR. M. M. M.)

13. DR. N. N. N. (DR. N. N. N.)

14. DR. O. O. O. (DR. O. O. O.)

15. DR. P. P. P. (DR. P. P. P.)

16. DR. Q. Q. Q. (DR. Q. Q. Q.)

17. DR. R. R. R. (DR. R. R. R.)

18. DR. S. S. S. (DR. S. S. S.)

19. DR. T. T. T. (DR. T. T. T.)

20. DR. U. U. U. (DR. U. U. U.)

21. DR. V. V. V. (DR. V. V. V.)

22. DR. W. W. W. (DR. W. W. W.)

23. DR. X. X. X. (DR. X. X. X.)

DURING 1947, THE TOTAL
DEDUCTIBLE FOR
U. S. TAX PURPOSES
WAS \$1,000.00

Final Statement
Continued

	1963	1964	1965	1966	1967	1968	1969	1970	1971	Total
1. <i>Major M. S. Sarnoff (Nevada)</i>	1033531		139569							1173100
2. <i>James H. C. Dick (South Africa)</i>								16100		16100
3. <i>M. M. & M. Sarnoff (Nevada)</i>	13333									13333
4. <i>Julius Rosenberg (Nevada)</i>							7100	5000		12100
5. <i>Sarnoff (Nevada)</i>								15000		15000
6. <i>Subtotal</i>	3166131	- 0 -	179569				7100	15000	X	3158800
7. <i>During 1963 taxpayer</i>										
8. <i>deducted \$109.25 for</i>										
9. <i>use of family car</i>										
10. <i>grossed \$45,000.00</i>										
11. <i>for a report.</i>										

Handwritten:
PLEASE PRINT NAME
1964

		FEE FORWARDED BY P. 1964					FEE FORWARDED BY P. 1964					Total	
		1964	1965	1966	1967	1968	1969	1970	1971				
1	Mrs. E. DRAKE (GARDEN) (D.R.M.)											13,915	
2	L.H. TORRE											1,550	
3	Aug. L. CAMP (GARDEN) (Kennebec, Garding, L.H.)	2,500		200						2,500		7,000	
4	STEEBES												
5		5,000		700									
6													
7													
8													
9													
10													
11	DURING 1964, THE FOLLOWING												
12	DEDUCTED \$1,844.37 FOR												
13	THE OF EMPLOYMENT, AND												
14	DEDUCTED \$74,900												
15	AS A RESULT												
16													
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For all other years
Collection 1965-1966

	1965	1966	1967
4423 CONG. W. KROGH (FARMER)	5000		
2000 (HARRISON)		1000	
JAMES A. GORDON (O. W. H. H. H. H.)			
2000 (HARRISON)		5000	
4423 CONG. W. KROGH (FARMER)			
2000 (HARRISON)			
4423 CONG. W. KROGH (FARMER)			
2000 (HARRISON)			
4423 CONG. W. KROGH (FARMER)			
2000 (HARRISON)			

	1968	1969	1970	1971	TOTAL
4423 CONG. W. KROGH (FARMER)					5000
2000 (HARRISON)					1000
JAMES A. GORDON (O. W. H. H. H. H.)					1000
2000 (HARRISON)					5000
4423 CONG. W. KROGH (FARMER)					11000
2000 (HARRISON)					1000
4423 CONG. W. KROGH (FARMER)					7000
2000 (HARRISON)					7000

DURING 1965, THIRTY
 DEDUCTED 24,25,26,27,28
 OF 25,26,27,28,29,30,31
 24,25,26,27,28,29,30,31
 24,25,26,27,28,29,30,31
 24,25,26,27,28,29,30,31

1969		
4/5/53	Feeder	500 -
10	"	150 -
16	Woodcock	2059.50
16	Woodcock	2500 -
22	Partridge	35 -
25	Woodcock	2500 -
May 12		
	Dangul	100 -
	Leavit	150 -
9	Dangul	100 -
	Leavit	150 -
	Leavit	1500 -
6/17		
	Dangul	100 -
	Leavit	150 -
	Baker (Sister)	2500 -
		11604.50

May 2/63	Partridge	7075 -
6	Dangul	100 -
	Leavit	150 -
14	Leavit	5000 -
Apr 27		763.27
June 12		
	Leavit	250 -
7	Leavit	1000 -
17	"	1666.66
20	Partridge	100 -
	Dangul	100 -
	Leavit	150 -
24	Leavit	1666.66
26	"	777.77
27	Partridge	150 -
		2382.02

May 12	Leavit	1666.66
11	Dangul	50 -
	Leavit	75 -
12	Leavit	1666.66
June 12		
	Leavit	87.50
12	"	57.50
	Dangul	50 -
	Leavit	75 -
7	Leavit	2500 -
July 4		
	Leavit	500 -
9	Leavit	462.67
17	Dangul	50 -
	Leavit	75 -
25	Leavit	2500 -
Oct 7		
	Dangul	50 -
	Leavit	75 -
		10000.00

Nov 4/63	Dangul	125 -
	Leavit	75 -
	Leavit	6250
Dec 4		
	Leavit	1575 -
11	Dangul	100 -
	Leavit	50 -
20	Leavit	2157.75
	"	1287.5
23	Leavit	2000.00
		7421.50
Jan 4		
	Leavit	1047.75
	Dangul	25.00
	Leavit	1166.66
		2537.50
Feb 4		
	Leavit	2500 -
	Leavit	2500 -
		5772.72
March 4		
	Leavit	1200 -

1/2	Clinton	812 -
3	Trager	700 -
6	Susannah	
26	Le. n.	112.50
5	Steffens	50000 -
47	Speranza	[200] -
27	"	[300] -
3	Clinton	2500 -
1/2	Kear	1500 -
10	Shore	235 -
	Kear	250 -
12	Charlotte	250 -
20	Pa Sparrow	400 -
	Trager (?)	620 -
26	Clinton	263 -
5/18	Collier	7500 -
	Quincy	2500 -
"	Clinton	250 -
13	Gargen	100 -
13	Cory	212 85

4/15	Carlet	2500 -
20	Kear	600 -
27	Le. n.	300 -
24	Tracy	50 -
5/7	Collier	3300 -
	Tracy	750 -
1	Le. n.	62 50
18	Tracy	100 -
	FTIS	1237 -
	Tracy	26.50
5/29	Rubens	2000 -
6/7	Wilson	2000 -
15	Quincy	1000 -
7/15	Wilson	2000 -
7/22	Tracy	250 -
7/30	Kear	500 -
8/5	Clinton	300 -

8/19	Tracy	250 -
9/11	Carlet	2500 -
27	Clinton	5000 -
9/29	Charlotte	200 -
	Sal. Co.	1751 -
	Speranza	525 -
10/6	Clinton	1000 -
	Cory	2701 -
10/19	Clinton	400 -
	Sal. Co.	2050 -
11/5	Tracy	100 -
	Kear	2500 -
11/6	Tracy	200 -
16	FTIS	2125 -
25	Clinton	275 -
	FTIS	300 -
11/1		2000 -
4	FTIS	2000 -

Dec 1 -	Clinton	150 -
	Clinton	250 -
12	Rubens	5000 -
21	Tracy	275 -
24	Kear	2500 -
28	Kear	2000 -

4/15	Philp Green	400 -
2/21	Charles Green	127500 -
21	Ed. Johnson	100000 -
22	Philp Green	400 -
26	U. Green ✓	17272 -
26	Sett	125 -
	Sam. Sett ✓	1125 -
29	Green	400 -
	Ball Co	600 -
	Chemist	275 -
2/8	Tridman	150 -
	Green	311 -
4	U. Green ✓	2545 -
7/16	Isley	12625 -
	Chemist	265 -
30	Alf. Green	2000 -
4/12	Green	1000 -

4/15	Green	5000 -
27	Sett	2425.15
7/6	Patricia Green	1500 -
21	Stafford	100 -
23	Rubin	1600 -
5/10	"	2202.75
7/10	Green	2000 -
8/17	"	3000 -
8	Stafford	100 -
31	Rubin	4500.2
9/23	Stafford	100 -
10/14	Rubin	200 -
11/15	Rubin	3000 -
5	Tyler	200 -
65	Cooley	10000 -
		20,915.15

4/1	Waller	150 -
6	Hay	100 -
12	FTIS	200 -
14	Epstein	275 -
29	FTIS	300 -
4/5	Alf. Green	500 -
	Wishy	250 -
	Bro. Johnson	125 -
	Alf. Green	1000 -
14	Rubin	1000 -
	Alf. Green	1250 -
17	Sett	2200 -
21	Bro. Sett	58796
21	Rubin	2400 -
6/2	Chemist	205 -
30	Alf. Green	1000 -
		17,729.6

CERTIFICATE OF SERVICE

It is hereby certified that service of this exhibit volume has been made on opposing counsel by mailing one copy thereof on this 17th day of April, 1974, in an envelope, with postage prepaid, properly addressed to him as follows:

Robert Trien, Esquire
360 Lexington Avenue
New York, New York 10017

Meyer Rothwacks
MEYER ROTHWACKS,
Attorney.

